10-24-90
Vol. 55 No. 206

federal register

Wednesday
October 24, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

10-24-90
Vol. 55 No. 206
Pages 42831-42952

federal register

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 90–22 of June 3, 1990

Determination Under Subsection 402(d)(5) of the Trade Act of 1974—Continuation of the Waiver Applicable to the Czech and Slovak Federal Republic

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618) ("the Act") I determine that the continuation of the waiver applicable to the Czech and Slovak Federal Republic will substantially promote the objectives of Section 402 of the Act, 19 U.S.C. 2432.

You are authorized and directed to publish this determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, June 3, 1990.

[FR Doc. 90–25307
Filed 10–22–90, 4:14 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 90–25 of June 21, 1990

Determination Under Section 405 of Public Law 101–246

Memorandum for the Secretary of State

Pursuant to Section 405 of Public Law 101–246, I hereby determine that the United Nations

—has continued implementation of consensus-based decision-making procedures on budgetary matters, which assure that sufficient attention is paid to the views of the United States and other member states who are major financial contributors to the budget;

—is making further progress toward the elimination of the abuse and secondment in the United Nations Secretariat; and

—is implementing the 15 percent reduction in the staff of the United Nations Secretariat, and that such reduction is being equitably applied among the nationals on such staff.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, June 21, 1990.

[FR Doc. 90–25308
Filed 10–22–90; 4:16 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 90–26 of June 21, 1990

Determination Under Section 405 of Public Law 101–246

Memorandum for the Secretary of State

Pursuant to Section 405 of Public Law 101–246, I hereby determine that the International Civil Aviation Organization, the International Labor Organization, the United Nations Industrial Development Organization, the World Health Organization, and the World Meteorological Organization have continued implementation of consensus-based decision-making procedures on budgetary matters which assure that sufficient attention is paid to the views of the United States and other member states who are major financial contributors to such budgets.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, June 21, 1990.

[FR Doc. 90–25309
Filed 10–22–90; 4:15 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 90–40 of September 30, 1990

Determination to Authorize the Furnishing of Emergency Military Assistance to Israel Under Section 506(a)(1) of the Foreign Assistance Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 506(a)(1) of the Foreign Assistance Act of 1961, as amended ("the Act"), 22 U.S.C. 2318(a)(1), I hereby determine that:

1. an unforeseen emergency exists which requires immediate military assistance to Israel; and

2. the aforementioned emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except Section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $74 million in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training.

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, September 30, 1990.

[FR Doc. 90–25310
Filed 10–22–90; 4:18 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 90–41 of September 30, 1990

Drawdown from DoD Stocks for Disaster Assistance for the Philippines

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2), I hereby determine that it is in the national interest of the United States to draw down defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training for the purpose of the provision of international disaster assistance for the Philippines.

Therefore, I hereby authorize the furnishing of up to $10 million of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training for the purposes and under the authorities of Chapter 9 of Part I of the Act.

You are authorized and directed to report this determination to the Congress immediately and to arrange for its publication in the **Federal Register.**

THE WHITE HOUSE,
Washington, September 30, 1990.

[FR Doc. 90–25311
Filed 10–22–90; 4:19 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 91–1 of October 4, 1990

Determination to Authorize the Furnishing of Emergency Military Assistance to Israel Under Section 506(a)(1) of the Foreign Assistance Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 506(a)(1) of the Foreign Assistance Act of 1961, as amended ("the Act"), 22 U.S.C. 2318(a)(1), I hereby determine that:

1. an unforeseen emergency exists which requires immediate military assistance to Israel; and

2. the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except Section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $43 million in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training, in addition to that which I authorized to be furnished to Israel during fiscal year 1990.

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, October 4, 1990

[FR Doc. 90–25312
Filed 10–22–90; 4:20 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-90-202IR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Temporarily Relaxation of Minimum Size Requirements for Red Seedless Grapefruit and Dancy Tangerines for the 1990-91 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule temporarily relaxes the minimum size requirements for domestic and import shipments of red seedless grapefruit to 3 5/16 inches in diameter on October 22, 1990, the same date that the minimum was to have increased to 3 9/16 inches in diameter under the current handling regulation. This rule also temporarily reduces the minimum size requirement for domestic shipments of Dancy tangerines to 2 4/16 inches in diameter from 2 5/16 inches in diameter. This action is based on the current and prospective crop and market demand conditions and maturity level and size composition of these citrus fruits.

DATES: The grapefruit size relaxation is effective for the period October 22, 1990, through October 20, 1991, and the Dancy tangerine size relaxation is effective for the period November 5, 1990, through August 18, 1991. Comments which are received by November 23, 1990, will be considered prior to issuance of the final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are about 13,000 producers of these citrus fruits in Florida. There are also about 25 importers of grapefruit. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers and a majority of importers may be classified as small entities.

The Citrus Administrative Committee (CAC), which administers the marketing order locally, met September 11, 1990, and unanimously recommended this action. The CAC meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the marketing order. CAC meetings are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture reviews CAC recommendations and information submitted by the CAC and other available information and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Section 905.306 (7 CFR 905.306) in Table I of paragraph (a) specifies minimum grade and size requirements for grapefruit and tangerines grown in Florida shipped to the domestic market. The domestic market is defined as the 48 contiguous States and the District of Columbia of the United States.

This action relaxes the minimum size requirement for domestic shipments of red seedless grapefruit grown in Florida to 3 5/16 inches in diameter for the period October 22, 1990, through October 20, 1991. Unless relaxed, under the current handling regulation the minimum size would increase to 3 9/16 inches in diameter from 3 5/16 inches in diameter on October 22, 1990.

The CAC recommended this action based on the expected maturity, flavor level, and size composition of the crop remaining for shipment on October 22. The CAC reports that this season's Florida grapefuit shipments began in mid-August, about three weeks earlier than normal. It also reports that grapefruit 3 5/16 inches in diameter is of more advanced maturity than normal for this time of the year and that it is receiving good consumer acceptance. Also, the grapefruit are not sizing as fast as they normally do. This action will permit smaller sized grapefruit to

continue to be shipped to domestic markets to meet the anticipated market demand and is designed to maximize shipments to fresh market channels. The Florida grapefruit shipping season normally begins in September and continues until the following July.

This action also relaxes the minimum size requirement for domestic shipments of Dancy tangerines grown in Florida to 2 1/16 inches in diameter from 2 5/16 inches for the period November 5, 1990 through August 18, 1991. This action follows the practice of prior years of lowering the size requirement at such time during the season when the smaller sized tangerines reach an acceptable level of flavor and maturity. By November 5 of this year, the CAC expects that the smaller sized tangerines will have reached a satisfactory level of maturity and flavor which consumers prefer.

The CAC recommended this action based on the expected maturity, flavor level, and size composition of the crop remaining for shipment on November 5. The CAC expects this season's Dancy tangerine crop to mature about three weeks earlier than normal. This action will permit size 210 Dancy tangerines to be shipped to domestic markets to meet anticipated market demand and is designed to maximize shipments to fresh market channels. Dancy tangerine shipments each season normally begin about the first of November, peak in December, and end the following March.

Some Florida citrus fruit shipments are exempt from the handling requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply the regulations for that area to the imported commodity.

Grapefruit import requirements are specified in § 944.106 (7 CFR part 944), and are effective under section 8e of the Act. That section requires that grapefruit imported into the United States must meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Since this action reduces minimum size requirements for domestically produced Florida red seedless grapefruit, the reduced size requirements also apply to imported red seedless grapefruit. Since revising Table I automatically changes the import requirements, no change is necessary in § 944.106. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed ⅘-bushel cartons exempt from the import requirements.

This action reflects the CAC's and the Department's appraisal of the need to make the size relaxations hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it would allow Florida citrus handlers to ship those sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the relaxations set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes minimum size requirements currently in effect for Florida red seedless grapefruit and Dancy tangerines and imported red seedless grapefruit; (2) Florida red seedless grapefruit and Dancy tangerine handlers are aware of this action which was recommended by the CAC at a public meeting and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1990–91 season Florida grapefruit crop has begun and the Florida Dancy tangerine crop is expected to be in full swing by November 5, 1990; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In paragraph (a), Table I, of § 905.306 the entries for seedless, red grapefruit and Dancy tangerines are revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	* * *
Grapefruit			
* * *	* * *	* * *	* * *
Seedless, red	10/22/90–10/20/91	Improved No. 2 (External) U.S. No. 1 (Internal)	3–5/16

TABLE I—Continued

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
	On and after 10/21/91	Improved No. 2 (External) U.S. No. 1 (Internal)	3-9/16
* * *	* * *	* * *	
Tangerines			
Dancy	11/05/90-08/18/91	U.S. No. 1	2-4/16
	On and after 08/19/91	U.S. No. 1	2-6/16
* *	* * *	* * *	

* * * * *

Dated: October 19, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-25141 Filed 10-23-90; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Parts 1744, 1751, 1773, and 1789

Electric and Telephone Programs, Redesignation of Regulations; Correction

AGENCY: Rural Electrification Administration, USDA.

ACTION: Correction to final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby corrects minor typographical errors in a final rule published September 27, 1990, at 55 FR 39393 to redesignate certain Agency regulations as part of a project to simplify, clarify, and update REA regulations. None of the published errors affects the substance of any regulation. One of the errors is in the Distribution Table in the preamble to the published regulation; the other two are in the headings of regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-9552.

SUPPLEMENTARY INFORMATION: In document 90-22901 beginning on page 39393 in the issue of Thursday September 27, 1990, REA makes the following corrections:

1. On page 39394 in the second column, at the end of the Distribution Table, the following entry is added:

Old part or section	*New part or section*
* * *	* * *
1789	1773

PART 1744—[CORRECTED]

2. On page 39396, in the second column, in the heading for part 1744, the words "POST LOAN" should read "POST-LOAN".

PART 1751—[CORRECTED]

3. On page 39397, in the third column, in the heading for part 1751, the word "PROCEDURE" should read "PROCEDURES".

Dated: October 16, 1990.

Gary C. Byrne,

Administrator.

[FR Doc. 90-25142 Filed 10-23-90; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-87-102]

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Two Types of Consumer Products; Correction

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Final rule. Notice of correction.

SUMMARY: The Department of Energy (Department or DOE) is correcting errors in the energy conservation standards for refrigerators, refrigerator-freezers, and freezers found in 10 CFR part 430, § 430.32a. These standards appeared in the **Federal Register** on November 17, 1989 (54 FR 47916).

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Carl Adams, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-43, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-9507.

U.S. Department of Energy, CE-43.1, Docket No. CE-RM-87-102, Forrestal Building, Room 6B-025, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-9320.

SUPPLEMENTARY INFORMATION:

I. Discussion

DOE proposed energy conservation standards for ten classes of refrigerators, refrigerator-freezers, and freezers (hereafter referred to as refrigerators) in a Notice of Proposed Rulemaking (Proposed Rule) on December 2, 1988 (53 FR 48798). DOE promulgated final standards for the ten classes on November 17, 1989. (Final Rule) (54 FR 47916). These standards take effect January 1, 1993.

The Proposed Rule was developed, based on detailed engineering and economic analyses. The engineering analysis was based on adding energy conserving design options to baseline units in each of the respective classes in order of increasing consumer paybacks. The design option with the fastest payback was added first, then the option with the second fastest payback, continuing in this manner until all the options were added that are technologically feasible. A discussion of the engineering analysis and the design options used in the Proposed Rule is found in the Proposed Rule's "Engineering Analysis of Design Options." See Technical Support Document, DOE/CE-0239, November 1988, chapter 3. (Hereafter referred to as the 1988 Technical Support Document.)

In performing the engineering analysis, the Department used a

computer model developed under contract to DOE by Arthur D. Little, Inc. (ADL). The ADL model is used to predict the energy consumption of a refrigerator, refrigerator-freezer or freezer, calculated from its design characteristics.

The model produces an equation that contains a constant number and a variable number. The constant is an indicator of the direct energy used for fan motors and heaters and compressor energy used to remove the internally generated heat from fan motors and heaters. The variable number calculates the energy needed to maintain the interior temperatures specified by the DOE test procedures. The energy needed depends upon the heat leakage into the cabinet, which is a function of the volume of the fresh food and freezer compartments. Therefore, this number will vary for different size equipment within a given class. A more detailed description of the model is provided in chapter 3 and appendix A of the 1988 Technical Support Document.

To run the ADL model requires detailed information on the cabinet dimensions, insulation levels, compressor performance, heat exchanger effectiveness, and auxiliary electrical equipment for different size equipment. When the Proposed Rule was issued, DOE had sufficient data for only three classes of refrigeration products: (1) Refrigerator-freezers—automatic defrost with top-mounted freezer without through-the-door ice service; (2) refrigerator-freezers—automatic defrost with side-mounted freezer without through-the-door ice service; and (3) upright freezers with manual defrost.

To predict the energy consumption of these three classes as a function of the volume of the fresh food and freezer compartments, the ADL model was used to provide the relationship between energy consumption and adjusted volume modeling products of different capacity but otherwise identical characteristics. The results of these calculations are regression equations dependent upon the characteristics, e.g., compressor efficiency, insulation efficiency, chosen for each model.

For the seven remaining classes of refrigeration products—(1) Refrigerators and refrigerator-freezers with manual defrost; (2) refrigerator-freezers with partial automatic defrost; (3) refrigerator-freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service; (4) refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service; (5) refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service; (6) upright freezers with automatic defrost; and (7) chest freezers and all other freezers—the engineering analysis used a combination of manufacturers' estimates of energy use and extrapolation of simulation results from the ADL model for the three previous classes to predict energy use for the various design options for the seven classes.

Relationships were developed between energy use and adjusted volume for the three classes simulated by the ADL model, as previously discussed. The relationships between energy use and adjusted volume for the remaining seven classes were obtained by adjusting the regression equation.

The Department then analyzed a range of potential standard levels to determine the economic impact of each potential standard.

In the comment period, DOE received sufficient data concerning four additional classes of refrigeration products—(1) Refrigerator-freezer—partial automatic defrost; (2) refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service; (3) refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service; and (4) upright freezers with automatic defrost—to allow the use of the ADL model for these four classes. DOE thus used the ADL model for seven classes for the Final Rule, the three initial classes and the four for which sufficient data were received.

For the remaining three classes of refrigeration products—(1) refrigerators and refrigerator-freezers with manual defrost; (2) refrigerator-freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service; and (3) chest freezers and all other freezers—DOE still did not have sufficient data to use the ADL model. Thus, following the close of the comment period, a microcomputer spreadsheet version of the ADL model was developed which required less complete data than the full ADL model but more than data than DOE had available for the Proposed Rule. DOE had only enough additional data to run the spreadsheet model at certain sizes in each of the three classes, but not all sizes in those classes. For example, for manual defrost refrigerators and refrigerator-freezers, DOE ran the spreadsheet model at a size of 17 cubic feet and then extended this result to cover all sizes for capacities of less than 39 cubic feet.

In late 1989, after publication of the Final Rule, DOE staff plotted the standards in preparation for delivery of a technical paper on refrigerator design options at the American Society of Heating, Refrigerating and Air-Conditioning Engineers winter 1989–1990 meeting. This analysis of the 1993 standard levels showed that for certain sizes of units in each of the three classes affected by this Notice, the 1993 standard level, compared to the 1990 standard level, resulted in significantly greater reduction in maximum allowable energy use than for other sizes. For smaller sizes of manual defrost refrigerators and refrigerator-freezers, for example, the standard required a reduction in maximum energy use of approximately sixty percent as contrasted with a decrease on the order of twenty-five percent for most of the models in the other seven classes.[1] Further, the Department concluded that the standard level of the Final Rule cannot be engineered based on the design options identified. In fact, if retained, there is the risk that this standard would eliminate from the market compact manual defrost refrigerator-freezers and result in the increased sale of more consumptive compact automatic defrost refrigerator-freezers.

Based upon comments on the Proposed Rule, DOE changed the design options considered in the engineering analysis. These changes included recognizing an energy use inefficiency or "penalty" for chlorofluorocarbon substitution and less efficient compressors. DOE also added a design option, thicker insulation, which resulted in a more efficient unit. This new combination of designs should have resulted in the Final Rule's "max tech" level being more energy consumptive than that of the Proposed Rule. However, when these design options were used in the microcomputer spreadsheet version of the ADL model, the analysis resulted in more stringent levels, i.e., allowing less energy consumption. Based upon this review, DOE staff concluded that the engineering analysis was in error for this class and recommended that action be taken to correct the standard level.[2]

[1] Expressed differently, this standard is more stringent by one-third than the maximum technologically feasible level ("max tech") in the Proposed Rule. In the Final Rule, the "max tech" level is twice as stringent as that in the Proposed Rule.

[2] In 1990, subsequent to DOE staff identification of this problem, representatives of refrigerator manufacturers and of the Association of Home Applicance Manufacturers informally approached DOE with their concerns regarding the stringency of the standards for compact manual defrost refrigerators and refrigerator-freezers and automatic defrost refrigerator-freezers with bottom-mounted

Continued

Similarly, the Department concluded that the engineering analysis produced results that are more stringent for certain sizes of automatic defrost refrigerator-freezers with bottom-mounted freezer without through-the-door ice service than can be technologically achieved. Based on the conclusion that the engineering analysis was defective, DOE also decided to correct the standard level for the third class.[3]

The analysis used in developing the corrected standards contained in today's Notice (1) uses the energy consumption for the baseline volume derived for the Proposed Rule as found in appendix A of the 1988 Technical Support Document, (2) makes the adjustment for no chlorofluorocarbons (CFCs) as discussed in the Final Rule, and (3) obtains the energy/adjusted volume equations from the regression equations for the classes which were simulated with the ADL model, as was done in the Proposed Rule. This revised analysis results in the corrected standards equations which are the subject of today's Notice. The analysis was performed for all three classes of refrigerators for which the spreadsheet model was used.

Today's Notice specifies a reduction in energy use from that required by the 1990 standards for refrigerators and refrigerator-freezers with manual defrost of 6.5 percent for compact units, 2 cubic feet adjusted volume. The Final Rule required a 60.5 percent reduction for these units. For larger units, 17 cubic feet adjusted volume, today's Notice requires a 10.9 percent reduction while the Final Rule required a reduction of 26.4 percent.

For refrigeratror-freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service, today's Notice requires a reduction of 32.7 percent for 18 cubic feet adjusted volume units. This compares with a reduction of 37.2 percent required by the Final Rule. For larger units, 21 cubic feet, today's Notice requires a 33.3 percent reduction, while the Final Rule required a reduction of 38.1 percent.

For chest freezers and all other freezers, today's Notice requires a reduction of 26.3 percent for the small units, 5 cubic feet adjusted volume. This compares with a reduction of 38.0 percent in the Final Rule. For larger units, 28 cubic feet adjusted volume, today's Notice requires a 26.6 percent reduction while the Final Rule required a reduction of 27.8 percent.

The Department is today correcting the standard levels found in 10 CFR part 430, § 430.32(a).

II. Environmental Review

In issuing the Proposed Rule, the Department prepared an Environmental Assessment (EA) (DOE/EA–0372) that was published within the 1988 Technical Support Document. The environmental effects associated with various standard levels were found not to be significant, and a Finding of No Significant Impact (FONSI) was published along with the Proposed Rule. (53 FR 48826, December 2, 1988).

The Department has concluded that the impact of today's Notice falls within the range of the FONSI previously published. Specifically, in the year 2010, the pollutant reductions of sulfur dioxide (SO_2), nitrogen dioxide (NO_2), and carbon dioxide (CO_2) addressed in the FONSI are 151,000 tons, 100,000 tons, and 9,180,000 tons, respectively. DOE considered the range of energy savings previously discussed and the market shares of the three affected classes. Refrigerators, and refrigerator-freezers with manual defrost account for 4.7 percent of refrigerator and refrigerator-freezer sales. Refrigerator-freezers with bottom-mounted freezers account for 2.5 percent of refrigerator and refrigerator-freezer sales. Chest freezers account for 47.4 percent of freezer sales. Based on the above, the Department estimates that the overall energy and pollutant savings from today's Notice will be reduced no more than 5.1 percent from the estimates provided in the Final Rule. Thus, in the year 2010, the revised polllutant reductions resulting from today's Notice of SO_2, NO_2, and CO_2 are estimated to be less than 117,000 tons, 70,000 tons, and 7,299,000 tons, respectively.

III. Regulatory Impact, Federalism and Regulatory Flexibility Reviews

The Department reviewed the Final Rule in accordance with the Department's obligations regarding the above subjects. Because of the minimal impact of the change resulting from today's Notice on the overall rulemaking in terms of the percentages of change of energy use and the market share of the affected classes previously discussed, the Department has concluded that the impact of today's Notice falls within the range and scope of the impacts presented in the Notice of Final Rulemaking and are addressed adequately in that Notice.

Issued in Washington, DC, October 16, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

List of Subjects in 10 CFR Part 430

Energy conservation, Household appliances.

For the reasons set out in the preamble, the following corrections are made to the final energy conservation standards for refrigerators, refrigerator-freezers, and freezers published in the **Federal Register** on November 17, 1989 (54 FR 47916) and which appear at 10 CFR 430.32(a).

PART 430—[AMENDED]

1. The authority citation for 10 CFR part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title VI, Part 2, by the National Appliance Energy Conservation Act, and by the National Appliance Energy Conservation Amendments of 1988 (42 U.S.C. 6291–6309).

2. Section 430.32(a) is correctly amended by revising items 1, 5, and 10 in the table to read as follows; paragraph (a) introductory text is set out for the convenience of the reader.

§ 430.32 Energy conservation standards and effective dates.

(a) Refrigerators/refrigerator-freezers/freezers. These standards do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

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freezers without through-the-door ice service. The information provided by industry representatives included new data in the form of graphs similar to material prepared by DOE staff and upon which DOE staff had already reached its conclusion as to error and the means for correction.

[3] The references to the discussion of the microcomputer spreadsheet program in section 3.2.4, Energy Use Data, of the 1989 Technical Support Document, DOE/CE–0277, November 1989 are superseded by this Notice.

Product Class	Energy standards equations (kwh/yr) effective dates	
	Jan. 1, 1990	Jan. 1, 1993
1. Refrigerators and Refrigerator-Freezers with manual defrost	(16.3AV+316)	(13.5AV+299)
5. Refrigerator-Freezers—automatic defrost with: Bottom-mounted freezer without through-the-door ice service	(27.7AV+488)	(16.5AV+367)
10. Chest Freezers and all other Freezers	(14.8AV+233)	(11.0AV+160)

[FR Doc. 90-25032 Filed 10-23-90; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AC31

Contract Medical Care; Non-Federal Hospital Payment Rates

AGENCY: Department of Health and Human Services and Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Health and Human Services (HHS) and the Department of Veterans Affairs (VA) have jointly amended VA's medical series of regulations to carry out provisions of Public Law 99-576, Veterans' Benefits Improvement and Health-Care Authorization Act of 1986. These regulations describe the payment methodology and amounts for non-Federal public and private hospital care provided at VA expense. Payment methodology and amounts will be determined by the Health Care Financing Administration (HCFA) PRICER.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Procedures Division (136F), Medical Administration Service, Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2504.

SUPPLEMENTARY INFORMATION: A total of twenty-two comments were received concerning the proposed regulatory changes published on pages 47726-47729 of the **Federal Register** of November 25, 1988 (53 FR 47726). Following careful analysis of these comments, the Department of Veterans Affairs (VA), in concert with the Department of Health and Human Services reopened the comment period to allow comment on a suggested change to the proposal. The suggested change would grant an exemption from these proposed VA regulations for alternative systems which have been granted a federal waiver under the provisions of 42 U.S.C. 1395f(b)(3) or 42 U.S.C. 1395ww(c), for Medicare payment. The former permits Medicare payment demonstration projects. The latter permits a State's hospital rate regulation system to be substituted for the Medicare payment system.

VA received five comments during the reopened comment period on the proposal to exempt alternative systems which have been granted a Federal waiver from the prospective payment system under either of those authorities for the purposes of Medicare payment. Those commenters all urged adoption of an exemption from these regulations. In urging that position, the commenters stated in essence that a separate VA payment policy would unnecessarily disrupt an alternative system of payment that is in operation, and has proven to be successful in effectively containing hospital costs.

After considering those comments, VA is exempting from these regulations those alternative systems which have been granted a Federal waiver for the purposes of Medicare payment. VA has taken this position for several reasons. In promulgating these regulations, VA and HHS are implementing a requirement in section 233 of Public Law 99-576. The clear purpose of that requirement is to contain costs VA incurs as a result of the hospitalization of VA beneficiaries in non-Federal facilities. Congress clearly contemplated that the payment policies reflected in such regulation would be similar to that established under the Medicare program. (Senate Report 99-444 (1986) p. 59). The above-cited provisions of law authorizing the waiver of alternative systems from the prospective payment system, for purposes of Medicare payment, also seek to achieve cost containment. Since Congress has provided for such an alternative cost-containment policy in connection with Medicare, VA would be furthering the purpose of any expectations underlying section 233 of Public Law 99-576 by making provisions in its regulation for such alternative systems. Moreover, imposing a different reimbursement system on providers participating under alternative systems may jeopardize or impede the progress made by the alternative systems, without necessarily achieving any significant additional cost containment benefits to the VA.

Fourteen commenters did not address the purpose for reopening the comment period, and instead surfaced concerns that were raised during the previous comment period. There were no opposing comments received on the issue presented for reopening the comment period.

The final rule is promulgated in accordance with section 233 of Public Law 99-576, Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, which requires VA and HHS to issue joint regulations concerning the payment methodology and amounts which VA would provide hospitals which furnish inpatient hospital care to veterans whose care has been authorized or will be sponsored by VA. The provisions of the statute concerning admission practices will be addressed in a separate rulemaking document being prepared by HHS. That regulation will be codified at 42 CFR 489.26. This final rule utilizes a payment system that duplicates the HHS Prospective Payment System (PPS) in most respects, including the provisions of 42 U.S.C. 1395f(b)(3) and 42 U.S.C. 1395ww(c), which are separate authorities that override the Medicare prospective payment system (PPS). The differences from the Medicare system are in the method VA will use to reimburse PPS hospitals for capital-related costs, and direct medical education costs, and to pay non-PPS hospitals for their services. Revisions in this final rule are made as a result of the re-opened comment period. The final rule adopts the proposed regulation with substantive changes, discussed below.

Medicare Methodology

Section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) established the prospective payment system for inpatient hospital services furnished to Medicare beneficiaries. Under PPS, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient services (capital-related costs, kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, direct costs of medical education and the costs of qualified nonphysician anesthetists in small rural hospitals) is made on a reasonable cost or other applicable basis.

Additional payments are made for outlier cases, for indirect medical education costs, and for hospitals that serve a disproportionate share of low income patients. Under PPS, a hospital is paid a prospectively determined payment rate, based on the patient's diagnosis, for furnishing inpatient services and is at risk for operating costs that exceed its payment rate. Similarly, if costs are below the payment rate, hospitals may keep the difference.

The PPS provides a payment amount for inpatient operating costs including: (1) Operating costs for routine services such as the costs of room, board, and routine nursing services; (2) operating costs for ancillary services, such as radiology and laboratory services furnished to hospital inpatients; (3) special care unit operating costs (intensive care type unit services); and (4) malpractice insurance costs related to services furnished to inpatients.

The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost or other applicable basis: (1) Capital-related costs (2) costs of services furnished by interns and residents in approved teaching programs, as described in sections 1861(b)(6) and 1886(h) of the Social Security Act (the Act), (3) kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, and (4) the costs of qualified nonphysician anesthetists in small rural hospitals.

Certain types of hospitals are not paid under PPS and are termed non-PPS hospitals. These hospitals include psychiatric, rehabilitation, long-term care, children's and cancer hospitals. Also included in the non-PPS hospital definition are psychiatric and rehabilitation units which are located in PPS hospitals. These are termed distinct part hospital units.

The Final Rule

Under the final rule, VA would apply the following methodology to pay hospitals. VA would receive a hospital bill for services to a particular veteran. VA will determine if the services provided can be authorized for payment in accordance with 38 CFR 17.50b or 17.80. If the care is payable, under the final rule, VA will use the commercially available "GROUPER" software to assign a Diagnostic Related Group (DRG) to the episode of care. This is the same GROUPER that Medicare and its fiscal intermediaries use to determine DRGs for Medicare payment. VA will then use a computer program developed by the Health Care Financing Administration (HCFA) called the HCFA PRICER to determine the payment amount. This program duplicates what the Medicare fiscal intermediaries use to determine payment for inpatient operating costs and additional payments for outliers (i.e., day or cost outliers), disproportionate share adjustment, and indirect medical education for facilities covered by PPS.

HCFA requires each participating hospital to submit to the fiscal intermediaries a cost report that contains information on its overall costs of operation, including capital-related costs, kidney, heart and liver acquisition costs, and direct medical education costs. HCFA then pays the hospitals, for allowable costs not covered by the PPS payments, either the Medicare share of their reasonable costs or other applicable payments. In accordance with the final rule, VA will pay hospitals the VA share of these costs based on a national average cost of capital-related costs, kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, direct costs of medical education and the costs of qualified nonphysician anesthetists in small rural hospitals, which HCFA has determined to be 9 percent of the average PPS payment. VA will adjust this figure each year based on information provided by HCFA. VA chose to use this approach so hospitals would not have to report excluded cost data to two government departments. HCFA requires each non-PPS hospital and distinct part hospital unit to report its costs to intermediary then determines the individual hospital cost-to-charge ratio. This ratio reflects the ratio between HCFA allowed costs and the charges the hospital charges the public for hospital care. The cost-to-charge ratio may be used to approximate the cost of services by multiplying the hospital's charges for services to Medicare beneficiaries by its cost-to-charge ratio. Medicare fiscal intermediaries use a departmental cost-to-charge ratio to determine payments to non-PPS hospitals and distinct part hospitals for ancillary services. In order for hospitals not to have to report this data to two government departments, VA will use the national operating cost-to-charge ratio for non-PPS hospitals of 63 percent plus the 9 percent add-on for capital-related costs, kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, direct costs of medical education and the costs of qualified nonphysician anesthetists in small rural hospitals as its multiplier for payment determinations to non-PPS hospitals. Therefore each non-PPS hospital's payment will be calculated by multiplying their charges by 72 percent.

VA has adopted limited exceptions to the payment principles set forth above. These are discussed below.

Responses to Comments

In responding to the publication of the proposed regulation, commenters addressed 12 different areas of concern. Each area will be addressed in the aggregate rather than responding to each concern of an individual commenter.

The preamble to the proposed regulation included a statement to the effect that VA thought that the implementation of the regulations would not have a significant economic impact on a substantial number of small entities. Thirteen responders from the state of Alaska disagreed with this postulate, citing its impact in the State of Alaska, and urged that VA either postpone the implementation of the regulation in the State of Alaska so that a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA), 5 U.S.C. 603–604, could be done to ascertain the economic impact in the State of Alaska, or completely suspend the implementation of the regulations in Alaska.

As regards to these commenters' assertions that the regulation would have a significant economic impact on a substantial number of small entities, VA acknowledges that this rule will result in hospitals receiving lower payment per VA patient than under the current payment methodology. It is important to note, however, that when caring for VA patients, Alaskan hospitals are currently

paid in full for each episode of care. This is not always the case for private patients since some of them fail to pay. Currently, those hospitals thus save collection cost and have effectively received a greater payment per VA case than received from other patients.

Based on VA experience, it appears that only 14 hospitals in Alaska are likely to treat veterans and thereby be affected by this rule. Of these, only for are considered small entities within the meaning of the Regulatory Flexibility Act. The Size Standards Division of the Small Business Administration (SBA) provides that in order for a hospital to be considered as a small entity under the RFA that it must have an annualized revenue of $3.5 million or less (13 CFR 121.2).

VA has reviewed the economic impact of the final rule in the State of Alaska. The methodology by which VA reached this projection is as follows. HCFA has indicated that nationally the ratio between HCFA payment and billed charges is 72 percent for PPS hospitals. HCFA has indicated that multiplying this ratio by the billed charges for a given episode of care would approximate the amount of payment an average hospital would receive under PPS. VA then multiplied its payments to Alaskan hospitals by that same percentage (72 percent) and subtracted the product from VA payment to that hospital in FY 1988 to ascertain what the reduction in VA payments would be under the final rule. This reduction was then divided by the hospital's total costs (as reported to HCFA) to determine the total reduction in hospital revenue resulting from the imposition of these regulations.

Based on our analysis, the four hospitals that do qualify as small businesses under the RFA will experience a reduction of 0.21 percent to 1.45 percent of their total revenue under the final regulation. It appears that, in general, the smaller hospitals will absorb a smaller percentage reduction than those not considered small entities under the RFA. Based on this analysis, VA concludes that the final rule will not cause a significant economic impact on a substantial number of small entities.

VA has considered the suggestion in some of the comments that VA establish a different payment methodology for Alaska because the regulation would limit hospital payment to a formula that does not, in their view, fully pay them. It is noted that the regulations' methodology makes provision for cost of living adjustments so that Alaskan hospitals get a higher rate of payment. For example, special provisions of the Medicare PPS system address the higher costs incurred by hospitals in Alaska; the high wage index adjustments for the labor-related portion of the PPS standized payment amounts; and the special adjustment (currently an increase of 25 percent) for non-labor related costs. The wage index would also apply to the labor-related component of costs paid on a reasonable cost basis. Therefore, establishing entirely different payment methodologies for application in individual States, as suggested, would undercut the purpose which joint VA—HHS regulations were to achieve.

VA acknowedges that non-Federal hospitals in Alaska generally have a greater veteran caseload than hospitals in other States. Providing and entirely different methodology for Alaska, however, would dilute the effect which the regulations were intended to achieve, to make fair payments while achieving cost containment. Congress anticipated that VA would adopt payment policies similar to those under Medicare. Indeed, the effect on those hospitals is essentially the same as it would be if, instead of being VA beneficiaries, the patients in question were Medicare beneficiaries, and payment were being provided under the Medicare program.

VA has for years simply paid hospitals in Alaska and elsewhere for their "usual and customary charges." As a result of that unregulated approach, VA experienced significant increases in contract care costs in Alaska and elsewhere in recent years. Given a statutory mandate to develop regulations in concert with HHS, VA is doing no more than applying the general Medicare payment formula, which Congress considered to be an appropriate mechanism. That payment model is aimed at making fair payments, while achieving cost containment. In applying that model evenhandedly, VA is simply seeking to carry out the purposes the legislation sought to achieve (See Senate Report 99–44 (1986), pp. 59–60).

VA does recognize that its role in Alaska, and thus the impact of this regulation, differs from that in other States. VA operates no hospital in Alaska, it has no arrangement with any other Federal provider to furnish hospital care to Alaskan veterans at this time, and it relies extensively on broad contracting authority to meet veterans' need (38 U.S.C. 603(a)(5)). As a result, there is a disproportionate mix in the veteran contract care caseload in comparison with other states. For the reasons discussed above, VA does not believe these circumstances warrant an exemption or establishment of a different payment methodolgy for Alaskan hospitals. However, the immediate impact of the proposed change could be formidable and potentially disruptive to some of these hospitals, none of which qualify as small business entities. Accordingly, the final rule makes provision for an interim payment methodology so as to permit an orderly transition period. Thus, the final rule establishes a one-year transition period applicable to episodes of care beginning on or after the effective date of the regulation. During that period VA will pay Alaskan hospitals the amount determined by the HCFA PRICER plus 50 percent to the difference between the amount billed by the hospital and the amount determined by the PRICER. After the one-year transition has elapsed, VA will pay the amount determined by the PRICER.

Seven commenters expressed a view of another subject, asserting that VA should pay capital costs and direct medical education costs using actual cost data or another applicable basis (as HCFA does) rather than, as was proposed, basing payment for these costs on a national average. No change is made in the final rule in response to these comments. Yearly, each PPS hospital provides HCFA with its actual capital costs and direct medical education costs. HCFA will then determine the national average of these items and will pass this information to VA. VA will use the HCFA PRICER to determine the exact DRG payment that Medicare would allow and then add to this amount the cost of capital and direct medical education using a national average. This streamlined approach roughly approximates what Medicare would pay. It is noted, under Section 1886(g)(3)(A) of the Act, HCFA has not paid the full amount of incurred capital costs since 1987. In addition, under section 1886(v), enacted by section 6002 of OBRA 1989, the current discount is 15 percent. Further, it should be noted that capital-related costs are scheduled to be incorporated into the Medicare PPS by October 1, 1991, as required by section 1886(g)(1)(A) of the Act. VA realizes that the use of a national average may overcompensate some hospitals (for that year) which have lower capital and direct medical education costs while at the same time may not provide full dollar compensation to those hospitals that have higher costs that year. However, since this is an average figure, VA anticipates that many hospitals will experience fluctuation in these costs from year to year and may as often be overcompensated, as they fall into the

lower cost portion of the spectrum, as undercompensated. VA is also cognizant of the fact that payment on the basis of actual cost results in more precision. For VA to seek to achieve such precision would be unreasonable, however, comparing the cost of accomplishing such precision to the relatively small numbers of veterans whose care VA sponsors (in relation to the size of the Medicare program) and the generally limited benefit that could be conferred through that effort on each individual hospital. In contrast, the cost of achieving such precision would be very heavy. In order for VA to collect and maintain such data VA would have to increase its Central Office staffing by 15 and increase the information collection burden on the public by some 10,000 hours. VA's budget for Medical Administration Service, which would have to support such staffing, has in fact been shrinking, and that staffing has been reduced from 46 to 26 over the period of 1981 to 1989. Achieving the sought-after precision would, therefore, come at a very substantial cost to VA in administering its own health care system, which consists of 172 hospitals and 223 outpatient clinics. Therefore, this regulation will rely on the use of national averages to pay for the cost of capital and medical education.

The proposed rule indicates that VA would pay non-PPS hospitals at a ratio of 64 percent of billed charges. (This figure was in error; the correct HCFA-calculated figure is 63 percent). Non-PPS hospitals are those that are excluded from the Medicare Prospective Payment System. These facilities include hospitals and distinct part hospital units such as psychiatric units and rehabilitation hospitals. Each year these facilities provide HCFA with their cost reports which indicate their aggregate charges for their services and what their services cost. Last year, HCFA determined that when it divided the non-PPS hospitals' cost by their charges that the resulting ratio was 63 percent. Five commenters requested that VA adopt HCFA's method of payment for non-PPS hospitals. All expressed the view that payment based on this percentage of billed charges was not adequate. The final rule does not adopt this suggestion, but VA will provide for an increased level of payment of these hospitals at a ratio of 72 percent of billed charges. The 72 percent payment level includes the 63 percent ratio of operating cost to charges and the 9 percent add-on for capital-related costs, kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, direct costs of medical education and the costs of qualified nonphysician anesthetists in small rural hospitals. In considering the comments, it has become apparent that paying non-PPS hospitals at the proposed percentage rate would result in payments at less than cost for most such hospitals. Taking this into account, VA will pay non-PPS hospitals at the 72 percent rate, which is the same rate which HCFA pays the average non-PPS hospital. We believe this revision will ameliorate the central concern raised by the commenters.

In adopting this change, however, VA is not adopting the very complex formula which HCFA applies in paying these hospitals. VA realizes that HCFA's payment method for non-PPS providers would result in more precision. However, as stated above VA would have to employ additional staff and increase the information collection burden on the public to achieve the requested precision. The cost of achieving this level of precision would be unreasonable in relation to the relatively small number of veterans whose care VA authorizes in non-PPS facilities.

Five commenters expressed the view that VA did not address the impact that these regulations would have on rural hospitals and urged that VA take the needs of rural hospitals into consideration. In fact, VA's payment methodology does take account of the circumstances associated with a rural location. This methodology uses the HCFA PRICER, which is a computer program that VA will use to duplicate the Medicare PPS payment methodology. The HCFA PRICER takes into account the provsions of Public Law 100–203 which were intended by Congress to address the needs of rural hospitals. For example, under the HCFA PRICER for discharges on or after January 1, 1989, rural hospitals received an increase in standardized rates of 9.72 percent. This compares to increases of 5.62 percent for hospitals in large urban areas and 4.97 percent for hospitals located in other urban areas. Differential updates were also provided by Public Law 101–239 effective for discharges occurring on or after January 1, 1990. Rural hospitals received a 9.72 percent increase as compared to 5.62 percent for large urban hospitals and 4.97 percent for other urban hospitals. Since VA is using the HCFA PRICER to emulate the Medicare PPS methodology and the HCFA PRICER contains an adjustment for rural hospitals mandated by Congress, no change in the rule is deemed warranted. The PRICER program also incorporates a number of other provisions which afford favorable treatment to hospitals in rural areas, such as the special treatment afforded Rural Referral Centers and Sole Community Hospitals, and provisions treating certain rural hospitals as urban for purposes of applying the wage index. In addition, the provisions of Public Law 101–239 created a new type of rural hospital that receives special treatment for cost reporting periods beginning on or after April 1, 1990, and ending on or before March 31, 1993. These hospitals are known as Medicare-dependent small rural hospitals.

The proposed rule provided that VA would use the same methodology that HCFA uses to pay hospitals with the exception that VA would use a streamlined approach to approximate HCFA's capital and direct medical education add-on payments, for care provided to veterans under VA sponsorship. Two commenters requested that VA use the same methodology that is used to make DRG payments under the Defense Department's CHAMPUS program to non-DoD providers of health care. The final rule makes no change in response to this suggestion. In administering the CHAMPUS program, DoD has contracted with fiscal intermediaries who are familiar with PPS methodology. These intermediaries determine the CHAMPUS payments based on cost reports submitted by health care providers. It would not be practicable for VA to use the CHAMPUS methodology since it is based on a very different patient profile. The CHAMPUS population is made up primarily of women and children while VA's population is made up primarily of males who are closer in age to patients covered by the Medicare program. This is important since the DRG assignment made by the commercially available grouper uses age and sex characteristics to assign a DRG.

One commenter, without requesting any changes to the proposed rule, asked if VA would make day and cost outlier payments on transfers. VA will make cost outlier payments and this issue is addressed in the final rule at 38 CFR 17.50f(d) and 38 CFR 17.87(d). Under Medicare, day outlier payments are made only to the discharging hospital. Thus, they are not made to a transferring hospital. See section 42 CFR 412.82. The final rule applies the same limitation. See 38 CFR 17.50f(d).

The proposed regulations state that VA will pay for current PPS pass-throughs such as the cost of capital and the cost of direct medical education. One commenter, without requesting a

change, asked if VA would reimburse hospitals for items that are pass-throughs in PPS. As discussed above, the final rule provides that VA will add a fixed percentage amount for the cost of capital and direct medical education to the DRG payments in lieu of pass-through payments based on costs or other applicable basis.

Under current VA policy, VA is the primary payer for all approved care in non-VA facilities. One commenter suggested that VA should be the secondary payer and pay the balance after the veteran's insurance had paid the hospital. VA feels that it would not be appropriate to address this issue in this final rule, particularly as it raises significant issues that were not raised in the proposal. VA may, however, study this issue in the future.

VA has proposed to use the HCFA PRICER to determine payments to non-VA hospitals for care provided to veterans. The HCFA PRICER makes a calculation to determine payment for the disproportionate share adjustment. The disproportionate share adjustment increases payments to certain hospitals for medical care provided to indigents for whom the hospital will not receive payment for services provided. One commenter expressed the belief that VA did not consider the disproportionate share adjustment. Since the HCFA PRICER calculates an adjustment for disproportionate share and VA is going to use the HCFA PRICER, it is clear that qualifying hospitals will be paid for the disproportionate share adjustment under the proposed regulation. Accordingly, the final rule reflects no change on this point.

Every year PPS and non-PPS hospitals submit cost data to HCFA. HCFA then determines each hospital's payment for capital-related costs and the cost of direct medical education. HCFA also determines each non-PPS hospital's cost-to-charge ratio by dividing the cost of care by billed charges. HCFA then determines a national ratio for each of these items. VA's payment methodology will be revised each year with the data supplied by HCFA. VA has revised the proposed regulation to delete references to the exact amounts of the adjustments for capital-related costs, kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, direct costs of medical education, the costs of qualified nonphysician anesthetists in small rural hospitals, and the cost-to-charge ratio for non-PPS hospitals. VA has made this change to avoid having to amend this regulation annually to reflect adjustments made by HCFA. The final regulation provides that VA will, however, publish in the Federal Register the annual changes to adjustments for the cost of capital and medical education and the cost-to-charge ratio for non-PPS hospitals once they have been determined by HCFA. VA does not consider this change in the body of the regulation to be substantive.

This final regulation is considered non-major under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; it will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will have no adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary certifies that this final regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612. It also will impose no regulatory, paperwork or administrative burdens on small entities since the change concerns the way VA pays for medical care in non-VA hospitals.

The Catalog of Federal Domestic Assistance number is 64.009.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: April 18, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: August 8, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

38 CFR Part 17, Medical, is amended as follows:

PART 17—[AMENDED]

1. The authority citation for § 17.50e is revised to read as follows:

17.50e Use of hospitals under sharing agreements.

* * * * *

(Authority: 38 U.S.C. 5053)

2. Section 17.50f is revised to read as follows:

§ 17.50f Payment for authorized public or private hospital care.

Except as otherwise provided in this section, payment for public or private hospital care authorized under § 17.50b of this part shall be based on a prospective payment system similar to that used in the Medicare program for paying for similar inpatient hospital services in the community. Payment shall be made using the Health Care Financing Administration (HCFA) PRICER for each diagnosis-related group (DRG) applicable to the episode of care.

(a) Payment shall be made of the full prospective payment amount per discharge, as determined according to the methodology in subparts D and G of 42 CFR part 412, as appropriate.

(b)(1) In the case of a veteran who was transferred to another facility before completion of care, VA shall pay the transferring hospital an amount calculated by the HCFA PRICER for each patient day of care, not to exceed the full DRG rate as provided in paragraph (a) of this section. The hospital that ultimately discharges the patient will receive the full DRG payment.

(2) In the case of a veteran who has transferred from a hospital and/or distinct part unit excluded by Medicare from the DRG-based prospective payment system or from a hospital that does not participate in Medicare, the transferring hospital will receive a payment for each patient day of care not to exceed the amount provided in paragraph (i) of this section.

(c) VA shall pay the providing facility the full DRG-based rate or reasonable cost, without regard to any copayments or deductible required by any Federal law that is not applicable to VA.

(d) If the cost or length of a veteran's care exceeds an applicable threshold amount, as determined by the HCFA PRICER program, VA shall pay, in addition to the amount payable under paragraph (a) of this section, an outlier payment calculated by the HCFA PRICER program, in accordance with subpart F of 42 CFR part 412.

(e) In addition to the amount payable under paragraph (a) of this section, VA shall pay, for each discharge, an amount to cover the non-Federal hospital's capital-related costs, kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, direct costs of medical education, and the costs of qualified nonphysician anesthetists in small rural hospitals. These amounts

will be determined by the Chief Medical Director on an annual basis and published in the "Notices" section of the **Federal Register.**

(f) Payment shall be made only for those services authorized by VA.

(g) Payments made in accordance with this section shall constitute payment in full and the provider or agent for the provider may not impose any additional charge on a veteran or his or her health care insurer for any inpatient services for which payment is made by the VA.

(h) Medical services not included in inpatient operating costs which the DRG payment covers (42 CFR part 412) shall be paid only to the extent they are reasonable and not in excess of rates or fees the provider of services charges the general public for similar services in the community.

(i) Hospitals of distinct part hospital units excluded from the prospective payment system by Medicare and hospitals that do not participate in Medicare will be paid at the national cost-to-charge ratio times the billed charges that are reasonable, usual, customary, and not in excess of rates or fees the hospital charges the general public for similar services in the community.

(j) A hospital participating in an alternative payment system that has been granted a Federal waiver from the prospective payment system under the provisions of 42 U.S.C. section 1395f(b)(3) or 42 U.S.C. section 1395ww(c) for the purposes of Medicare payment shall not be subject to the payment methodology set forth in this section so long as such Federal waiver remains in effect.

(k) Payments for episodes of hospital care furnished in Alaska that begin during the period starting on the effective date of this section through the 364th day thereafter will be in the amount determined by the HCFA PRICER plus 50 percent of the difference between the amount billed by the hospital and the amount determined by the PRICER. Claims for services provided during that period will be accepted for payment by VA under this paragraph (k) until December 31 of the year following the year in which this section became effective.

(Authority: Section 233, Pub. L. 99-576)

3. Section 17.87 is revised to read as follows:

§ 17.87 Allowable rates and fees.

When it has been determined that a veteran has received public or private hospital care, the expenses of which may be paid under § 17.80 of this part, the payment of such expenses shall, except as otherwise provided in this section, be based on a prospective payment system similar to that used in the Medicare program for paying for similar inpatient hospital services in the community. Payment shall be made by using the HCFA PRICER for each diagnosis-related group (DRG) applicable to the episode of care.

(a) Payment shall be made of the full prospective payment amount per discharge, as determined according to the methodology in subparts D and G of 42 CFR part 412, as appropriate.

(b)(1) In the case of a veteran who was transferred to another facility before completion of care, VA shall pay the transferring hospital an amount calculated by the HCFA PRICER for each patient day of care, not to exceed the full DRG rate as provided in paragraph (a) of this section. The hospital that ultimately discharges the patient will receive the full DRG payment.

(2) In the case of a veteran who has transferred from a hospital and/or distinct part unit excluded by Medicare from the DRG-based prospective payment system and hospitals that do not participate in Medicare, the transferring hospital will receive a payment for each patient day of care not to exceed that provided in paragraph (i) of this section.

(c) VA shall pay the providing facility the full DRG-based rate without regard to any copayments or deductible required by any Federal law that is not applicable to VA.

(d) If the cost of length of a veteran's care exceeds an applicable threshold amount, as determined by the HCFA PRICER program, VA shall pay, in addition to the amount payable under paragraph (a) of this section, an outlier payment calculated by the HCFA PRICER program, in accordance with subpart F of 42 CFR part 412.

(e) In addition to the amount payable under paragraph (a) of this section, VA shall pay, for each discharge, an amount to cover the non-Federal hospital's capital-related costs, kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, direct costs of medical education, and the costs of qualified nonphysician anesthetists in small rural hospitals. These amounts will be determined by the Chief Medical Director on an annual basis and published in the "Notices" section of the **Federal Register.**

(f) Payment shall be made only for those services authorized by VA.

(g) Payment by VA shall constitute payment in full and the provider or agent for the provider may not impose any additional charge on a veteran or his or her health care insurer for any inpatient services for which payment is made by VA.

(h) Medical services not included in inpatient operating costs which the DRG covers (42 CFR part 412) shall be paid or reimbursed only to the extent they are reasonable and not in excess of rates or fees the hospital or provider of services charges the general public for similar services in the community.

(i) Hospital or distinct part hospital units excluded from the prospective payment system by Medicare and hospitals that do not participate in Medicare will be paid at the national cost to charge ratio times the billed charges that are reasonable, usual, customary, and not in excess of the rates or fees the hospital charges the general public for similar services in the community.

(j) A hospital participating in an alternative payment system that has been granted a Federal waiver from the prospective payment system under the provisions of 42 U.S.C. section 1395f(b)(3) or 42 U.S.C. section 1395ww(c) for the purposes of Medicare payment shall not be subject to the payment methodology set forth in this section so long as such Federal waiver remains in effect. VA pays such a hospital in accordance with paragraph (i) of this section.

(k) Payments for episodes of hospital care furnished in Alaska that begin during the period starting on the effective date of this section through the 364th day thereafter will be in the amount determined by the HCFA PRICER plus 50 percent of the difference between the amount billed by the hospital and the amount determined by the PRICER. In order to cover this special dispensation period, claims for services provided on the enactment date of this regulation, and extending during this period, will be accepted for payment by VA until December 31 of the year following the year in which these regulations were enacted.

(Authority: Section 233, Pub. L. 99-576)

[FR Doc. 90-25085 Filed 10-23-90; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-122; RM-7075]

Radio Broadcasting Services; Coeburn, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 259C3 for Channel 259A at Coeburn, Virginia, and modifies the construction permit for Station WZQK(FM) to specify operation on Channel 259C3, in response to a petition filed by Preston L. Salyer. *See* 55 FR 10260, March 20, 1990. The coordinates for Channel 259C3 are 37-02-56 and 82-37-35.

EFFECTIVE DATE: December 3, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-122, adopted September 25, 1990, and released October 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Virginia by removing Channel 259A and adding Channel 259C3 at Coeburn.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25159 Filed 10-23-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-102; RM-7127]

Radio Broadcasting Services; Lake Village, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 278A to Lake Village, Arkansas, as that community's second local FM broadcast service, in response to a petition for rule making filed by Edna Fay Stone. *See* 55 FR 9929, March 16, 1990. Coordinates used for Channel 278A at Lake Village are 33-18-08 and 91-15-18. With this action, the proceeding is terminated.

DATES: *Effective* December 3, 1990; the window period for filing applications on Channel 278A at Lake Village, Arkansas, will open on December 4, 1990, and close on January 3, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-102, adopted September 27, 1990, and released October 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 278A at Lake Village.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25158 Filed 10-23-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 91050-0019]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Secretary of Commerce (Secretary) is prohibiting further retention of pollock by vessels fishing in the Western and Central Regulatory Areas of the Gulf of Alaska and is requiring that pollock be treated in the same manner as prohibited species from 12 noon, Alaska local time, October 19, 1990, through December 31, 1990. This action is necessary to prevent the total allowable catch (TAC) for pollock in the combined Western and Central Regulatory Areas from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), October 19, 1990, through midnight, A.l.t., December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR 611.92 and part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Under § 672.20(c)(3), when the Regional Director, Alaska Region, NMFS (Regional Director), determines that the TAC of any target species or "other species" category in a regulatory area or district has been reached, the Secretary will publish a notice in the Federal Register declaring that the species or species group is to be treated as a prohibited species under § 672.20(e) in

all or part of that regulatory area or district.

The 1990 TAC specified for pollock in the Western and Central Regulatory Areas (including Shelikof Strait) is 70,000 mt (55 FR 3223, January 31, 1990). The Regional Director reports that U.S. vessels caught 55,178 mt of pollock through September 29 in the combined Western and Central Regulatory Areas. At current catch rates, the TAC will be taken by October 19, 1990.

Therefore, pursuant to § 672.20(c)(3) and (e), the Secretary is declaring that pollock must be treated in the same manner as prohibited species in the combined Western and Central Regulatory Areas of the Gulf of Alaska effective 12 noon, A.l.t., October 19, 1990, through midnight, December 31, 1990.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice.

This action is taken under § 672.20 (c)(3) and (e) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: October 18, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-25128 Filed 10-19-90; 12:15 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 206
Wednesday, October 24, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Review of Food Packages

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of intent to conduct a review and solicit comments.

SUMMARY: In accordance with the mandate of section 123(c) of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147), the Department announces its intent to conduct a review of the appropriateness of the foods provided by the Special Supplemental Food Program for Women, Infants and Children (WIC). Directors of WIC State and local agencies and other individuals with expertise in the fields of nutrition and public health, as well as other interested parties, are encouraged to comment on issues proposed for consideration by the Department and to suggest additional issues for consideration within the scope of this review.

DATES: To be assured of consideration, comments must be received on or before December 24, 1990.

ADDRESSES: Comments should be sent to Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 1017, Alexandria, Virginia 22302, (703) 756–3746. Comments on this notice should be clearly labeled "Food Packages Review Notice" and should identify the specific issue(s) addressed. All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at the office of the Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 1017, Alexandria, Virginia 22302, (703) 756–3730.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of the Act.

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Background

The authorizing legislation for the WIC Program, section 17 of the Child Nutrition Act (CNA) of 1966, as amended, established the program to provide supplemental foods and nutrition education to low-income pregnant, breastfeeding and postpartum women, infants and children up to age 5 who are at nutritional risk. The Program also serves as an adjunct to health care during critical times of growth and development to prevent the occurrence of health problems and to improve the health status of participants.

The CNA clearly established the WIC Program as "supplemental" in nature, that is, the food packages issued to various categories of participants are not intended to provide a complete diet but are designed to complement additional wholesome foods needed for a balanced diet. The Department administers a variety of food assistance programs which are designed to work together to provide a more nutritious diet to the Nation's low-income persons. Low-income families can, and frequently do, receive benefits from more than one of these Programs. The largest of these programs, the Food Stamp Program, provides general food assistance in the form of coupons which are used to increase the food-buying power of low-income individuals and families. Other programs are designed with a more limited population in mind. For example, the National School Lunch Program provides meals to children in school and the Child and Adult Care Food Program provides meals to persons in child and adult care centers and family day care homes. WIC Program benefits are intended to meet the special nutritional needs of a very specific population. The nutrition education provided by WIC assists participants in choosing foods which, together with the supplemental foods contained in the packages, meet their total dietary needs.

Section 17(b)(14) of the CNA defines "supplemental foods" as "those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary." The legislation provides substantial latitude to the Department in designing WIC food packages and places the obligation on the Department to prescribe foods which successfully target those nutrients critical to growth and development and typically lacking in the diets of the WIC-eligible population. Historically, the Department has based its prescriptions of WIC foods on sound nutritional research and input from State and local agencies, the health and scientific communities, industry and the general public. Further, these prescriptions have been developed with regard to a set of fundamental principles which are discussed below. Food package requirements appear in the WIC Program regulations at § 246.10(c). The current food packages (Appendix) were established through program regulations in 1980 (45 FR 74854 (November 12, 1980)). To better meet the nutritional needs of participants, the 1980 rulemaking created six different monthly packages: two for infants, one

for children and women with special dietary needs, one for children 1 to 5 years of age, one for pregnant and breastfeeding women, and one for nonbreastfeeding postpartum women. These packages were designed to follow infants' developmental needs and current pediatric feeding recommendations, complement the eating patterns of preschool children, and supplement the special requirements of pregnant and breastfeeding women.

Most importantly, the packages were developed to provide foods that are rich sources of the nutrients that tend to be lacking in the diets of the WIC-eligible population. The original legislation for the WIC Program specifically identified protein, iron, calcium and vitamins A and C as the target nutrients (Section 9 of Pub. L. 92–433, September 26, 1972). However, subsequent legislation deleted the references to specific target nutrients and instead directed the Department to prescribe the appropriate nutrients (Section 3 of Pub. L. 95–637, November 10, 1978). The Department determined, through an examination of nutritional research prior to the 1980 rulemaking, that the original target nutrients continued to be lacking among the WIC-eligible population. Thus protein, iron, calcium and vitamins A and C were again proposed for public comment (44 FR 69254 (November 30, 1979)), and were retained in the final rulemaking. Given the supplemental nature of the WIC Program, the food packages were not intended to supply 100 percent of the Recommended Daily Allowances (RDA) of each specified nutrient. Participants are expected to obtain a portion of the RDA from other food sources. However the packages do provide categories of foods which are high in one or more of the target nutrients and are capable of providing a substantial portion, and in some instances the entire amount, of the RDAs for the targeted nutrients.

Section 17(f)(12) of the CNA directs the Department to assure that, to the extent possible, the fat, sugar and salt content of WIC foods is appropriate. Several changes made to the WIC food packages in the 1980 rulemaking responded specifically to this mandate. For example, the Department established a limit on the amount of sugar permitted in WIC cereals and on the amount of cheese that can be issued, in part to moderate the salt content of the packages. With regard to the issue of fat content, the packages are designed to maintain a wide range of variability in fat levels within the food packages, depending on the particular foods prescribed. Individual tailoring enables State and local agencies to adapt food packages to the individual participant's needs for higher or lower fat levels, as well as to limit salt and sugar content as appropriate.

Aside from considerations which are specified in legislation, a prime consideration in food package design is cost. The Department is committed to serving as many eligible persons as possible while maintaining the nutritional integrity of the program. Efficiency in providing nutrients is important since increases in the total cost of the food packages reduce the number of participants served by the program. Thus, cost is an important consideration in the selection of WIC foods, and the packages are designed to encourage further cost control by permitting State and local agencies the flexibility to specify lower-cost food brands, types and container sizes within regulatory parameters.

State and local agencies are permitted flexibility in other aspects of the food packages as well. The quantities in the packages are expressed as maximum levels which must be available to participants as needed. However, State and local agencies have the authority to tailor quantities according to the needs of individual participants or categories of participants when based on a sound nutritional rationale. These tailoring provisions, established in program regulations (§ 246.10) and supplemented by FNS Instruction 804–1, are designed to permit State agencies to implement their own nutrition policies and philosophies within the parameters of the food packages. Section 17(f)(13) of the CNA and regulations at § 246.10(e) also give the Department the authority to approve substitution of foods by State agencies to allow for different cultural eating patterns under certain circumstances. State agencies must demonstrate that the substitute foods are nutritionally equivalent to foods prescribed by the Department. Pursuant to section 212(a) of the Hunger Prevention Act of 1988 (Pub. L. 100–435), which amended section 17(b) of the CNA, WIC regulations also give State agencies even greater flexibility to adapt food packages to the circumstances of homeless persons (§ 246.10(e)(3)).

In addition, the food packages are designed with regard to a number of practical considerations which reflect participant and program needs. The WIC foods should be readily available commercially, offer variety and versatility in preparation to participants, and have broad appeal. The foods should also permit daily consumption by an individual over a month's time. The WIC food package is an individual food prescription which, in order to have the full effect in improving nutritional status, must be consumed by the participant and not other family members. Further, the foods should generally be of domestic origin with minimal processing, since the WIC Program, along with other food assistance programs administered by the Department, participates in a longstanding partnership with American agriculture and endeavors to provide foods which support the nation's farming industry. Lastly, the packages should be administratively manageable for State and local agencies and vendors. That is, they should be clearly describable on food instruments and easily understood by both participants and vendors.

The Department acknowledges the continuing advances in nutritional research since the current food packages were established in 1980. Recommended dietary practices are constantly evolving in response to new knowledge and may hold significant implications for the WIC Program. Food technology has also advanced substantially over the last decade, resulting in a large number of new products, forms and container sizes. Many of these new products are specially fortified or formulated to address the needs of a special population, such as persons with allergies. The Department continues to receive requests to modify the current food packages and permit greater substitution of foods or the instruction of additional foods.

Mandated Food Package Review

The appropriateness of WIC foods continues to be an issue of major interest to the WIC community and to other nutrition and health professionals and representatives of the food industry. Accordingly, Congress mandated, in section 123(c) of Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, that the Department conduct a review of the appropriateness of WIC food packages. The legislation directs the Department to examine the nutrient density of foods; to consider how effectively protein, calcium and iron are provided to WIC Program participants; and to consider the extent to which nutrients, for which program participants are most vulnerable to deficiencies, such as iron, thiamin, riboflavin, vitamin A, and zinc, are effectively provided to participants. The Act mandates that a final report be provided to Congress by June 30, 1992.

Review Procedure

The Department believes that the consideration of such important and complex issues will be best accomplished through public participation and is therefore soliciting input from all segments of the WIC community, as well as other informed, concerned members of the public. Further, the Department wishes to ensure that its review provides for the open and equitable consideration of these issues. The procedure which the Department has established for conducting its review is designed to provide the broadest possible base for public input, to include access to technical expertise from independent, credible entities, and to permit consideration of pertinent issues by a knowledgeable forum which is broadly representative of the WIC community.

Specially, the Department plans to enlist independent, technical experts to review comments submitted in response to this Notice and to develop technical papers summarizing and assessing this input for the Department's consideration. These papers will be presented for consideration to the National Advisory Council on Maternal, Infant and Fetal Nutrition (NAC), authorized by section 17(k) of the CNA, to consider issues relevant to the WIC Program and to make recommendations to the President and Congress. The NAC consists of 24 members (including State and local health officials and WIC Program administrators from a variety of agencies, physicians, program participants and a representative of the food industry) who share a common interest in and knowledge of the WIC Program. The Council's consideration of these issues will be included in the Department's report to Congress. This report, in turn, may influence future legislative action by Congress with regard to the WIC Program and/or regulatory action by the Department. Any program regulations issued by the Department as a result of this review would be published as proposals for public comment prior to promulgation of a final rulemaking.

Review Considerations/Parameters

Given the critical importance of food package content to nutritional impact of the WIC Program, commenters should carefully weigh the potential effects of their recommendations on the overall integrity of the packages. Responses to this notice should be developed with serious regard to the dietary needs of the WIC-eligible population, the supplemental nature of the program and the critical impact of cost of program services. In addition, the Department encourages commenters to submit suggestions with the following considerations in mind: (1) Cultural and ethnic food preferences; (2) commercial availability, variety and appeal of foods; (3) versatility in food preparation; (4) feasibility of apportionment into daily servings for an individual over a month's time; (5) domestic origin of foods; (6) State and local agency flexibility; and (7) administrative manageability.

The principles outlined above (and discussed elsewhere in this Notice) constitute a framework upon which WIC food packages have been developed. The Department encourages commenters to present their recommendations in the context of their potential impact on the affected food package(s) and their responsiveness to these principles or to alternate principles which the commenter believes should be considered.

Further, comments should include justification in terms of current nutritional research. Simple expressions of opinion or statements of position, without benefits of clearly stated rationale based on scientific evidence, would be of little use to the Department in the consideration of such complex issues.

Review Issues

The Department carefully considered how best to present the issues in this Notice. Attempts to provide background information specific to each issue inevitably resulted in issue descriptions which could bias responses. The Department believes that this review will benefit from the broadest possible scope of public input with minimal Departmental direction. Therefore, the following issues proposed for consideration are broadly stated without Departmental comment. Within the context of these broad issues, commenters are encouraged to state their responses as specifically as possible. Commenters may address additional issues which are within the scope of this review. Each of the issues presented below is numbered. In order to ensure that comments receive full and appropriate consideration, commenters are asked to precede each comment with the number of the issue to which it pertains, and to clearly define issues they have chosen to address which are not listed in this Notice.

1. What evidence exists to support or contraindicate the continuance of the five current target nutrients (high-quality protein, iron, calcium, and vitamins A and C) in the WIC food packages? What, if any, changes in or additions (e.g., thiamin, riboflavin, or zinc) to the WIC target nutrients should be considered and why?

2. What evidence exists to support or contraindicate the current WIC food packages as nutrient-dense (i.e., high nutrient to calorie rate) and bioavailable sources (i.e., high nutrient to calorie rate) and bioavailable sources (i.e., readily absorbed and utilized by the body) of the recommended WIC target nutrients? What, if any, foods should be introduced as nutrient-dense and bioavailable sources of the recommended WIC target nutrients and why?

3. Participants are currently divided into six groups for the purpose of prescribing food packages, and maximum monthly allotments of foods within each packages, and maximum monthly allotments of foods within each package have been established. What evidence exists to support these six groups, or to indicate the need for revisions of any of these groups? What evidence exists to support the maximum monthly allowances for foods within the food package for each of the six groups, or to indicate the need for revisions of any of these maximum allowances?

4. State agencies have the authority, with Federal approval based on a nutrition rationale, to categorically tailor WIC food packages to better address the nutritional needs of subgroups of participants (e.g., reduced quantities of foods in WIC food packages prescribed for 1 and 2 year old children compared to their older counterparts). What guidelines should the Department use in approving State agency proposals for categorically tailored food packages?

5. In addition, State agencies have the authority to tailor WIC food packages to better meet the nutritional needs of individual participants. For example, the amount of sugar, fat, sodium, and cholesterol provided to a specific participant by the food package can be modified through nutrition tailoring. What evidence exists to indicate that current WIC food packages provide sufficient flexibility for such individual tailoring, or to indicate that the design of any of the food packages should be changed to more fully accommodate or restrict individual tailoring?

6. Current regulations limit the sugar content of cereals which may be prescribed to participants. Is there any evidence to support or refute the need to establish regulatory limits on the amounts of sugar and other substances (e.g., fat, sodium, cholesterol, or artificial flavors, colors, or sweeteners) which may be contained in WIC food packages?

7. State agencies have the authority, with Federal approval, to make food substitutions in the WIC food packages to accommodate cultural eating patterns. Currently, any cultural food substitute must be comparable to the traditional WIC food counterpart in cost, availability, and nutritional value (at least with respect to the WIC target nutrients). What, if any, revisions should be made to the criteria to which State agencies must adhere in making such substitutions and why?

Dated: October 18, 1990.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

MAXIMUM MONTHLY ALLOWANCES FOR WIC FOOD PACKAGES

[Food package numbers and target populations]

Foods	Food package I	Food package II	Food package III	Food package IV	Food package V	Food package VI
	Infants 0–3 months	Infants 4–12 months	Children/women with special dietary needs[1]	Children 1–5 years	Pregnant or breast-feeding women (up to 1 year post-partum)	Nonbreast-feeding postpartum women (up to 6 months postpartum)
Formula: [2]						
Concentrated liquid.	403 fl oz	403 fl oz	403 fl oz			
OR	OR	OR	OR			
Powdered	8 lb	8 lb	8 lb			
OR	OR	OR	OR			
Ready-to-feed (RTF).	806 fl oz	806 fl oz	806 fl oz			
Fruit/Vegetable juice: [3]						
Infant juice [4]		63 fl oz				
OR		OR				
Adult juice [5]						
Single-strength		92 fl oz (fruit only)	138 fl oz	276 fl oz	276 fl oz	184 fl oz.
OR		OR		OR	OR	OR
Reconstituted frozen concentrate.		96 fl oz (fruit only)	144 fl oz	288 fl oz	288 fl oz	192 fl oz.
Cereal:						
Infant cereal [6]		24 oz	36 oz			
OR			OR			
Cereal [7] (hot or cold).			36 oz	36 oz	36 oz	36 oz.
Milk: [8]						
Fresh fluid				24 qt	28 qt	24 qt.
Eggs: [9]				2–2½ doz	2–2½ doz	2–2½ doz.
Legumes: [10]						
Mature dry beans or peas.				1 lb	1 lb	
OR						
Peanut butter				OR	OR	
				18 oz	18 oz	

[1] The supplemental foods described below are not authorized solely for the purpose of enhancing nutrient intake or managing body weight of participants.

[2] *Formula in Food Packages I and II*—refers to iron-fortified infant formula, which is a complete formula not requiring the addition of any ingredients other than water prior to being served in a liquid state, and which contains at least 100 milligrams of iron per liter of formula at standard dilution which supplies 67 kilocalories per 100 milliliters; i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution.

Formulas which do not meet these requirements are authorized when a physician determines that the infant has a medical condition which contraindicates the use of infant formula as described above. Low-calorie formulas are not authorized solely for the purpose of managing body weight.

RTF formula is only authorized when the competent professional authority determines and documents that there is an unsanitary or restricted water supply, there is poor refrigeration, or the person who is caring for an infant may have difficulty in correctly diluting concentrated liquid or powdered formula.

Formula in Food Package III—refers to product that is intended for use as an oral feeding and prescribed by a physician for a participant who has a medical condition which precludes or restricts the use of conventional foods and necessitates the use of a formula. Such medical conditions include, but are not limited to: metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndrome and allergies. Documentation of the physician's determination of the need for a formula and the specific formula prescribed shall be included in the participant's certification file.

The addition of 52 fluid ounces of concentrated liquid, 1 pound of powdered or 104 fluid ounces of RTF formula may be issued on an individual basis provided the need is demonstrated and documented in the participant's certification file by the competent professional authority.

[3] Vegetable juice is not authorized for infants due to the higher potential for food allergies. Issuance of juice prior to the time when the infant can drink from a cup is discouraged. The competent professional authority shall instruct the participant's parent or guardian to feed the juice to the participant from a cup to prevent "bottle caries."

[4] Infant juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters.

[5] Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice. Combinations of single strength and frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

[6] Dry infant cereal which contains a minimum of 45 milligrams of iron per 100 grams of dry cereal. Cereal plus infant formula or cereal plus fruit combinations are not authorized infant cereals.

[7] Dry cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

[8] Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of vitamin D per quart (.9 L); or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per quart (.9 L); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per quart (.9 L).

Evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 L) or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 L) may be substituted for fluid whole milk at the rate of 13 fluid ounces (.4 L) per quart (.9 L) of fluid whole milk. Dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 L) may be substituted for fluid whole milk at the rate of 1 pound (.4 kg) per 3 quarts (2.8 L) of fluid whole milk.

Nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 L) may be substituted for fluid whole milk at the rate of 1 pound (.4 kg) per 5 quarts (4.7 L) of fluid whole milk.

Domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Park-Skim or Whole) may be substituted for fluid whole milk at the rate of 1 pound (.4 kg) of cheese per 3 quarts (2.8 L) of fluid whole milk. 4 pounds (1.8 kg) is the maximum amount of

cheese which may be substituted unless the participant is lactose intolerant. Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.

[9] Dried egg mix may be substituted at the rate of 1.5 pounds (.7 kg) egg mix per 2 dozen fresh eggs or 2 pounds (.9 kg) egg mix per 2½ dozen fresh eggs.

[10] Peanut butter or mature dry beans or peas including, but not limited to, lentils, black, navy, kidney, garbanzo, soy, pinto and mung beans, crowder, cow, split and black-eyed peas.

[FR Doc. 90–25129 Filed 10–23–90; 8:45 am]
BILLING CODE 3430–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 Ch. I

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions; correction.

SUMMARY: This action corrects an error with reference to the comment close date to a notice published on Wednesday, October 10, 1990, page 41200 and in the first column. The FAA inadvertantly inserted October 29, 1990. Please change the comment close date to read January 8, 1991.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G FAA Headquarters Building (FOB 10A), 800 Inependence Avenue SW., Washington, DC 20591; telephone (202) 267–3132, AGC–10.

Denise D. Hall,

Manager, Program Management Staff.

[FR Doc. 90–25139 Filed 10–23–90; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Changes in the Customs Service Field Organization; Apalachicola, Carrabelle, and Port St. Joe, FL

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations by closing the ports of entry of Apalachicola and Carrabelle and designating Port St. Joe as a Customs station. Given the inactivity at these ports, together with the necessity for providing full Customs service at such inactive ports, closing Apalachicola and Carrabelle as ports of entry and converting Port St. Joe to a Customs station are warranted by the circumstances. These changes are proposed in order to obtain more efficient use of Customs personnel, facilities and resources, and to provide better service to carriers, importers and the public.

DATES: Comments must be received on or before December 24, 1990.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection and Control, 202–566–9425.

SUPPLEMENTARY INFORMATION:

Background

Customs ports of entry and stations are locations where Customs officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of Customs and related laws. The significant difference between ports of entry and stations is that at stations, the Federal Government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry or clearance of vessels; and

(2) Except as otherwise provided by the Customs Regulations, the expenses (including any per diem allowed in lieu of subsistence), but not the salaries of its officers or employees, for service rendered in connection with the entry or delivery of merchandise.

The list of designated Customs ports of entry is set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)) and Customs stations are listed in § 101.4(c), Customs Regulations (19 CFR 101.4(c)). The Customs organizational structure consists of regions, districts, ports of entry within districts, and stations supervised by ports. This change is proposed pursuant to the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449), as well as 5 U.S.C. 301.

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to continue to provide better service to carriers, importers, and the public, Customs proposes to close the Apalachicola and Carrabelle ports of entry located in the Florida panhandle area, and at the same time convert Port St. Joe to a Customs station. These ports of entry have been inactive and not manned for a number of years. Only some six vessels were entered at Port St. Joe during the past three-year period.

Adequate Customs service will continue to be provided to the Panhandle region of Florida through the ports of Panama City and Pensacola as well as the proposed Port St. Joe station. Pensacola, Panama City, and Port St. Joe are located along the coast in a linear pattern and are thus able to provide convenient service to importers in that area. In addition, the Port of Mobile is located in close proximity to Pensacola and importers/brokers had indicated their preference for using this larger port of entry to enter and clear merchandise, which is reflected in low workload figures for the Panhandle ports.

Since there generally appears to be no immediate increase in international activity in the Panhandle area, closing these ports of entry would have little if any economic impact in this area, especially in view of the total absence of commercial activity at these ports, except for the little business carried on at Port St. Joe.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Executive Order 12291 and Regulatory Flexibility Act

Because this proposal relates to the organization of Customs, it is not a regulation or rule subject to E.O. 12291.

Similarly, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the proposal may have a limited effect upon some small entities in the affected areas, it is not expected to be significant because changes in the Customs field organization in other areas have not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Lists of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Proposed Amendments

It is proposed to amend part 101, Customs Regulations (19 CFR part 101) as set forth below:

PART 101—GENERAL PROVISIONS

1. The authority for part 101 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States) 1623, 1624.

§ 101.3 [Amended]

2. § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by removing the listings "Apalachicola, Fla.", "Carrabelle, Fla. (E.O. 7508, Dec. 11, 936; 1 FR 2149)", and "Port St. Joe, Fla. (E.O. 7818, Feb. 17, 1938; 3 FR 503)", in the column headed "Ports of Entry," in the Tampa, Florida, district of the Southeast Region.

§ 101.4 [Amended]

3. Section 101.4(c) is amended by inserting, in appropriate alphabetical order, in the listing for "Tampa, Fla." under the "District" column, "Port St. Joe" in the column headed "Customs stations" and "Panama City" in the column headed "Port of entry having supervision".

Approved: October 17, 1990.

Samuel H. Banks,

Acting Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 90-25054 Filed 10-23-90; 8:45 am]

BILLING CODE 4820-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-447, RM-7351]

Radio Broadcasting Services; Bowling Green, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bowling Green Broadcasters Inc., licensee of Station WCBZ(FM), Channel 244A, Bowling Green, Kentucky, proposing the substitution of Channel 244C3 for Channel 244A at Bowling Green, and the modification of Station WCBZ(FM)'s license to specify operation on Channel 244C3. The community could receive its first wide coverage area FM service. A site restriction of 15.6 kilometers (9.7 miles) southwest of the community is required at coordinates North Latitude 36-53-00 and West Longitude 86-34-20. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Bowling Green or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before December 10, 1990, and reply comments on or before December 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey W. Malickson, P.O. Box 32488, Charlotte, North Carolina 28232 (Attorney for Bowling Green Broadcasters, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-447, adopted September 24, 1990, and released October 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25163 Filed 10-23-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-449, RM-7430]

Radio Broadcasting Services; Morro Bay, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Don Stewart, seeking the allotment of Channel 231A to Morro Bay, California, as that community's second local FM broadcast service. Coordinates for this proposal are 35-21-48 and 120-50-42.

DATES: Comments must be filed on or before December 10, 1990, and reply comments on or before December 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioner, as follows: Don Stewart, c/o William L. Zawila, Esq., 12550 Brookhurst Street, Suite A, Garden Grove, California 92640.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–449, adopted September 27, 1990, and released October 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for ocmments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25161 Filed 10–23–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–448, RM–7427]

Radio Broadcasting Services; Nome, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of the Catholic Bishop of Northern Alaska, seeking the allotment of Channel 241A to Nome, Alaska, as that community's second local FM broadcast service. Coordinates used for Channel 241A at Nome are 64–30–00 and 165–25–00.

DATES: Comments must be filed on or before December 10, 1990, and reply comments on or before December 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Leon T. Knauer, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–448, adopted September 27, 1990, and released October 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25160 Filed 10–23–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–450, RM–7391]

Radio Broadcasting Services; Winterset, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by AFM Associates seeking the substitute of Channel 258C3 for Channel 258A at Winterset, Iowa, and the modification of its construction permit for Station KTDG(FM) to specify operation on the higher powered channel. Channel 258C3 can be allotted to Winterset in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.7 kilometers (8.5 miles) south to avoid a short-spacing to Station KFGQ, Channel 257A, Boone, Iowa, and to the outstanding construction permit for Channel 258A at Eldora, Iowa. The coordinates for this allotment are North Latitude 41–12–34 and West Longitude 94–02–09. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 258C3 at Winterset or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before December 10, 1990, and reply comments on or before December 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert S. Stone, Esq., McCampbell & Young, 2021 Plaza Tower, P.O. Box 550, Knoxville, Tennessee 37901–0550 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–450, adopted September 27, 1990, and released October 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is

no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permission *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25162 Filed 10-23-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Ch. 53

Air Force Logistics Command Federal Acquisition Regulation Supplement; Special Contracting Methods, Vendor Rating System

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: The Air Force proposes to amend chapter 53 of title 48 of the Code of Federal Regulations by adding the Air Force Logistics Command (AFLC) Federal Acquisition Regulation as Appendix A, consisting of parts AFLC 5317 and AFLC 5352. AFLC is developing the Vendor Rating System (VRS) for use as an objective contractor performance evaluating, rating, and ranking system. The intended effect is to assist AFLC contracting officers in determining which competitive offer represents the greatest value to the Government by providing each offer's historical performance on AFLC contracts in terms of rating in quality and delivery. The procedure will facilitate awards to contractors who have delivered quality supplies within specified times under AFLC contracts. VRS provides for a ranking of the offers under a solicitation considering the evaluated offer amount and the VRS ratings.

DATES: Comments must be submitted on or before November 23, 1990

FOR FURTHER INFORMATION CONTACT: S. Wiginton, AFLC/PMPL, Wright-Patterson AFB OH 45433-5001.

SUPPLEMENTARY INFORMATION:

A. Background

AFLC/VRS is intended to implement in part the "DOD Action Plan to improve the Quality of Spare and Repair Parts through Reductions in Contractor Nonconformances." The DOD Action Plan presents 26 objectives for improving the quality of spare parts. The AFLC VRS implements Objective Number 4, which is to encourage the use of quality factors in the source selection process for spare and repair parts by centralizing, automating, collecting, and sharing contractor performance information and by maximizing the use of existing sources of contractor performance information to improve acquisition processes, purge defective material and improve the quality of DOD spare and repair parts.

The VRS will be initiated within AFLC by a 10-month test period at three of the five air logistics centers. Adjustments or revisions to the policy and provision resulting from test period data will be incorporated before AFLC-wide implementation.

B. Regulatory Flexibility Act

This procedure may have a significant impact on a substantial number of small entities. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be sent to the Chief Counsel for Advocacy of Small Business Administration. A copy of the IRFA may be obtained from AFLC/PMPL, ATTN: S. Wiginton, Wright-Patterson AFB OH 45433-5001.

C. Paperwork Reduction Act

This rule does not contain information collection requirements which require the approval of OMB under the criteria of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Chapter 53

Government procurement.

Therefore, it is proposed to amend title 48 of the Code of Federal Regulations chapter 53 by adding Appendix A to include part AFLC 5317 and part AFLC 5352 to read as follows:

Appendix A to Chapter 53—Air Force Logistics Command Federal Acquisition Regulation Supplement

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART AFLC 5317—SPECIAL CONTRACTING METHODS

SUBCHAPTER H—CLAUSES AND FORMS

PART AFLC 5352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part AFLC 5317—Special Contracting Methods

Subpart AFLC 5317.91—Vendor Rating System

Sec.

Authority: 5 U.S.C. 301 and FAR 1.301

Subpart AFLC 5317.91—Vendor Rating System

AFLC 5317.9100 Scope of subpart.

This subpart prescribes policies and procedures for the AFLC contractor performance evaluation system identified as the Vendor Rating System (VRS). VRS is a contractor performance evaluation, rating, and ranking system. It is designed to assist the contracting officer in determining the awardee whose offer represents the greatest value to the Government in accordance with stated criteria.

AFLC 5317.9101 Definitions.

The following terms and definitions apply to VRS and this subpart:

(a) *Computed offer.* An initial offer under a solicitation plus all evaluation costs identified in the solicitation, e.g., First Article, transportation, and/or other costs. The computed offer will be calculated by unit or total amount depending on whether the Government requirement and the evaluation costs are established as unit or total quantity amounts.

(b) *Delivery rate (DR).* A computation of the 12-month delivery performance history of a contractor using the number

of contract schedule deliveries completed after the due date because of contractor caused reasons compared to the number of schedules completed during the same period by that contractor. The computation will be carried to the fourth decimal place.

(c) *Greatest value.* The most value to the Government considering price, quality, delivery, and other factors. It is a determination of the contracting officer based on consideration of factors impacting a Government requirement. Considerations may be, but are not limited to, an offeror's quality and delivery performance history, evaluated price, complexity of the item(s), and time to delivery versus need.

(d) *Quality rate (QR).* A computation of the 12-month quality performance history of a contractor using the count of contractor-caused units reported defective under quality deficiency reports (QDRs) compared to the number of units delivered for the same period by that contractor. The computation will be carried to the fourth decimal place.

(e) *Ranking.* The order of all responsive offerors to a solicitation, considering stated VRS factors and the computed offer amount, from the highest to the lowest with the highest ranked first in order.

(f) *VRS competitive range.* Those offerors on a solicitation whose quality and delivery performance histories result in a minimum rating of 98 in quality and 85 in delivery elements and whose price offers are within 15 percent of the lowest price offer. The low offeror will not be in the VRS competitive range unless performance history meets the minimum ratings. The competitive range may be otherwise established with the approval two levels above the contracting officer.

AFLC 5317.9102 Policy.

AFLC 5317.9102-1 Uses.

(a) VRS shall apply to all AFLC air logistics center (ALC) competitively negotiated, National Stock Number (NSN) identified, spare part acquisitions estimated to exceed $10,000 in total value. These evaluations will be processed through the VRS database/software application.

(b) The VRS:

(1) Provides data to analyze a contractor's historical quality and delivery performance by Federal Stock Class (FSC) and total business with AFLC ALC central contracting activities, and

(2) Provides quality and delivery performance information on those contractors by FSC and total business with the ALC central contracting activities.

AFLC 5317.9102-2 Objectives.

(a) The primary objective of VRS is to provide the contracting officer with a procedure for making an award based on the greatest value to the Air Force. Management information and contract status tracking systems are merged into an evaluation procedure using quality and delivery performance historical data on all AFLC ALC contractors.

(b) An expected benefit from VRS is contractor improvements in performance on AFLC contracts and enhancement of AFLC's ability to acquire quality supplies on time from proven producers.

(c) Improvements in quality and delivery performance will decrease administrative costs of processing unacceptable material and the contract administration actions required on delinquent contract items and enhance the quality of the material.

AFLC 5317.9102-3 Responsibilities.

(a) HQ AFLC/PMMT, Wright-Patterson AFB OH, is responsible for maintenance of records to support the decision making process leading to command-wide implementation including the rationale for systems applications and computations.

(b) HQ AFLC/PMPL, Wright-Patterson AFB OH, is responsible for issuance of policy and AFLC-wide implementation.

(c) HQ AFLC/PMXL (00-ALC/PML), Hill AFB UT, is responsible for providing the Automated Contract Preparation System (ACPS) data feed to VRS.

(d) SM-ALC/PMXD, McClellan AFB CA, is responsible for design, management, and maintenance of the VRS database and applications programs to extract data from J041/G021/ACPS for VRS, and queries required to obtain data from the VRS data base.

AFLC 5317.9103 Procedures.

AFLC 5317.9103-1 Data sources.

(a) The QR is computed using a contractor's data from G021, or its successor system, and the INFOCEN network for QDR data and the J041 system for the number of units delivered.

(b) The DR is computed using a contractor's data from J041 for delivery schedules completed on time and delinquent.

(c) The QR and DR are computed for a contractor's Contract and Government Entity (CAGE) code by each FSC and total business with AFLC. The applicable rates will be provided with the ACPS abstract.

AFLC 5317.9103-2 Performance standards.

(a) The VRS standards and rating symbols for historical quality and delivery performance are:

(1) Exceptional (E)—Exceeds AFLC target performance range. A rating for QR: 99.0000 or higher. A rating for DR: 95.0000 or higher;

(2) Acceptable (A)—Meets AFLC target performance range. A rating for QR: 98.9999 to 98.0000. A rating for DR: 94.9999 to 85.0000;

(3) Marginal (M)—Does not meet AFLC acceptable performance range but may receive award when a higher rated offeror is not responsive to the solicitation, exceeds the competitive range criteria, or is determined unacceptable for some other reason. A rating for QR: 97.9999 to 97.0000. A rating for DR: 84.9999 to 75.0000; and,

(4) Unacceptable (U)—Fails to meet marginal rating and should not be considered for an award. A rating for QR: Less than 97. A rating for DR: Less than 75.

(b) Data for the quality and delivery performance rates will be updated on a monthly basis. The update will be data from the previous month and effective on the tenth working day of the following month.

(c) Performance history ratings will be provided for each contractor by individual FSC and total of all FSCs.

(d) An offeror with performance history in the FSC of the item(s) on the solicitation will be evaluated using that offeror's quality and delivery performance history rating in that FSC.

(e) An offeror with no AFLC performance history in the FSC of the item(s) on the solicitation will be evaluated using that offeror's AFLC total quality and delivery performance history rating in all other FSCs.

(f) An offeror with performance history only in quality performance will be evaluated using that rate and the delivery performance will be evaluated as acceptable with zeros (00.0000) assigned for the DR. A limited preaward survey, as a minimum, should be performed for the delivery element. File documentation of an affirmative determination of contractor responsibility specifically addressing delivery performance is required before award.

(g) An offeror with no AFLC performance history in any FSC will be evaluated as acceptable with zeros (00.0000) assigned for QR and DR for evaluation. A preaward survey should

be performed. File documentation of an affirmative determination of contractor responsibility is required before award.

(h) HQ AFLC/PM and ALC/PM personnel will have overnight query access to VRS information. Information to be provided to other Government agencies or Air Force offices will only be released in writing by a Director or Deputy Director in the office of the HQ AFLC/PM, or higher level, at HQ AFLC or a division chief or deputy division chief, or higher level, at an ALC. All released data must carry the restrictive legend "CONFIDENTIAL CONTRACTOR INFORMATION—FOR OFFICIAL USE ONLY." All other releases of VRS information must have prior coordination of the local Staff Judge Advocate.

(i) A data retrieval and storage program, the VRS Data Base History (DBH), will be maintained by SM-ALC/PMXD. The data base will be accessed by the ALCs for responding to management and contractor queries and protest documentation. The DBH storage and retention period is 24 months. The retrieval query will provide for overnight response with printout. All printouts will carry

AFLC 5317.9103-3 Evaluation.

(a) The ACPS abstract function will, after completion of all other evaluations established by the solicitation (e.g., Balance of Payments, Quantity Discount, transportation costs, and Multiple Awards), convert the offers for each solicitation item into computed offers and provide the amounts on the abstract.

(b) The VRS spreadsheet will be provided with the abstract as a separate document.

(1) The spreadsheet will list CAGE, computed offer, QR and standard rating symbol, DR and standard rating symbol, and rank each offeror for each separately evaluated item. Offers will be ranked in order of their standard rating and then their computed offer amount.

(i) Three contractors, all rated exceptional in QR and DR, would be ranked in order of their computed offer from the lowest to the highest.

(ii) Three contractors, given a mix of ratings, will be ranked by order of the rating symbols (E/E, E/A, A/A, E/M, A/M, M/M, E/U, A/U, M/U, and U/U).

(2) Items involving subline items, including attachments and exhibits, will be evaluated as one item using total subline items and quantities for the item.

(3) Provide the standard rating symbol (E, A, M, or U) for quality and delivery for each offeror.

(4) The spreadsheet will be annotated as "RESTRICTED EVALUATION DATA—CONTRACTING OFFICER DELIBERATION DOCUMENT."

(5) The contractor performance data on the spreadsheet will be considered confidential contractor information and given appropriate protection.

(c) Only offerors rated exceptional or acceptable in quality and delivery performance will be considered in the VRS competitive range and further evaluated for award. A minimum of two offers rated exceptional or acceptable is required for the competitive range to be established under VRS by the ACPS process.

(d) The contracting officer may make a greatest value award based on, but not limited to, one of the following selection criteria:

(1) The low computed offer with VRS symbol of exceptional.

(2) The computed offer of an AFLC Blue Ribbon Program contractor in the FSC of the solicited item(s) which is within ten percent of the low computed offer.

(3) The computed offer, not from an AFLC Blue Ribbon Program contractor, of an offeror coded exceptional in both areas which is within ten percent of the low computed offer.

(e) The rate differences may be considered in making the award decision when more than one offeror receives the same symbols or symbol combination.

(f) The basis for the award decision will be documented in the contract file.

(g) Each offeror not in the competitive range will be notified when the determination is made. ACPS will provide notice letters to the offerors determined outside the competitive range for contracting officer signature and transmittal. The letters will be provided with the abstract and VRS spreadsheet.

(h) If the criteria in AFLC 5317.9102-2(c) are not met, the ACPS will not generate the notice letters.

(i) If the offer selected for award is not the lowest-priced responsive and responsible offer, the contracting officer shall conduct written or oral discussions as prescribed at FAR 15.610, "Written or Oral Discussions," and solicit best and final offers as prescribed at FAR 15.611, "Best and Final Offers." As a minimum for solicitations under VRS, the technical deficiencies to be addressed to the offerors in the competitive range will be their individual QR and DR.

AFLC 5317.9103-4 Responsibility determination.

(a) VRS establishes performance standards to determine a competitive range based on historical performance. It neither negates the requirement for an affirmative determination of contractor responsibility, determines a contractor ineligible for award, nor makes any other negative determination of contractor responsibility. The rating system may provide an indication of a contractor's responsibility by computing the quality and delivery rates for historical performance. It does not reflect the most current data available on a contractor.

(b) The Automated Contractor Responsibility Review Program (ACRRP) review is not negated by this system. Regardless of the awardee, an affirmative determination of responsibility is required since the VRS ratings are computed using data recorded through the previous month and the rates apply through the following month. ACRRP review is required to obtain current information prior to making an award. Current delinquency rate, notification of issuance of Method C or D letters, results of recent preaward surveys, or notices of potential problem areas from various sources should be considered.

AFLC 5317.9103-5 Approvals.

(a) Division level approval in writing is required prior to:

(1) Issuing a competitive, negotiated solicitation for NSN identified items and estimated to exceed $10,000 when VRS will not be used; or

(2) Awarding a contract to any offeror with a marginal or unacceptable rating in the quality or delivery element.

(b) The following prior approval levels apply when the award is not to be made to the lowest price offeror:

(1) Chief of the contracting branch when the difference between the low price offer and the award price exceeds $50,000 up to $150,000.

(2) Chief or Deputy Chief of the contracting division when the difference between the low price offer and award price exceeds $150,000 up to $250,000.

(3) Director or Deputy Director of the contracting office when the difference between the low price offer and award price exceeds $250,000 up to $500,000.

(4) Commander or Vice Commander, Air Logistics Center, when the difference between the low price offer and the award price is $500,000 or more.

AFLC 5317.9103-6 Reporting.

The following data will be accumulated in the VRS automated system:

(a) Number of competitive awards exceeding $10,000 which did not use the VRS and the reason(s).

(b) Number of competitive awards over $25,000 which did not use the VRS and the reason(s).

(c) Number of awards using VRS including:

(1) Number of awards and total dollars to the highest ranked offeror;

(2) Number of awards, total dollars, and dollar amount of premium price to exceptional ranked offerors who were and were not the low price offeror;

(3) Number of awards, total dollars, and dollar amount of premium price to a combination of exceptional and acceptable rated offerors who were and were not the low price offeror. Breakout between exceptional and acceptable standard ratings in quality and delivery performance;

(4) Number of awards, total dollars, and dollar amount of premium price to acceptable rated offerors who were and were not the low price offeror;

(5) Number of awards, total dollars, and dollar amount of premium price to a combination of acceptable and marginal rated offerors who were and were not the low price offeror. Breakout between acceptable and marginal standard ratings in the quality and delivery performance;

(6) Number of awards, total dollars, and dollar amount of premium price to marginal rated offerors who were and were not the low price offeror;

(7) Number of awards, total dollars, and dollar amount of premium price to a combination of marginal and unacceptable rated offerors who were and were not the low price of feror. Breakout between marginal and unacceptable standard ratings in the quality and delivery performance;

(8) Number of awards, total dollars, and dollar amount of premium price to unacceptable rated offerors who were and were not the low price offeror;

(9) Number of awards, total dollars, and dollar amount of premium price to other rating combinations. Breakout by standard rating combinations and performance areas; and

(10) Total number of awards and dollars.

(d) Listing or tracking system which identifies the contract number and NSN for VRS awards. This listing will be retained for 24 months.

AFLC 5317.9103-7 Solicitation provision.

The contracting officer shall insert the provision at AFLC 5352.217-9031, Vendor Rating System (VRS), in Section L of all solicitations for acquisitions meeting the criteria of AFLC 5317.9102-1(a).

SUBCHAPTER H—CLAUSES AND FORMS

PART 5352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301 and FAR 1.301.

Subpart 5352.2—Texts of Provisions and Clauses

AFLC 5352.217-9031 Vendor Rating System.

As prescribed at AFLC 5317.9103-7, insert the following provision:

AFLC Vendor Rating System (VRS) (XXX 1991)

(a) Award of this contract will be made using the Air Force Logistics Command (AFLC) Vendor Rating System (VRS) procedure. VRS is a contractor performance evaluation system which provides each offeror's historical quality and delivery performance data by Federal Stock Class (FSC) and total business with AFLC central contracting activities. Data will be used to assist the contracting officer in evaluating offers to determine the VRS competitive range and which award will be of greatest value to the Government.

(b) Responsive offerors with quality or delivery performance history rated "Exceptional" or "Acceptable" and within 15 percent of the low evaluated price will be considered in the VRS competitive range. The VRS performance standards are:

(1) Exceptional: AFLC performance history files computing a quality rate of 99.0000 or higher and a schedules-completed-ontime rate of 95.0000 or higher.

(2) Acceptable: AFLC performance history files computing a quality rate of 98.9999 to 98.0000 and a schedules-completed ontime rate of 94.9999 to 85.0000.

(3) Of ferors with no performance history with AFLC will be rated "Acceptable" and assigned rates of 00.0000.

(4) The rate is an arithmetical computation based on the following:

(i) Offeror's history rating of experience with AFLC in the total FSC, not the specific item(s), of the solicited item(s); or

(ii) If the offeror has no AFLC history within the solicited FSC, the offeror's history rating of experience with AFLC in all other FSCs.

(c) Each separately awardable line item will be evaluated.

(d) Offers from contractors who are not rated "Exceptional" or "Acceptable" may be considered for award if the VRS competitive range determination does not permit an award decision by the contracting officer.

(e) The Government will award under this solicitation to the responsive, responsible offeror whose offer is determined to be the greatest value to the Government—price and other factors considered. The determination will be based on consideration of performance history, evaluated price, and time to delivery versus need if best effort delivery is a part of the solicitation. Additional specific evaluation factors may be identified in other provisions of the solicitation.

Note: The following optional wordings for paragraph (f) portrays two possible provisions. The wording to be used during the test period and the AFLC command-wide implementation will depend on the status of legislation and legal decisions regarding the award of negotiated contracts without discussion. Current GAO decisions do not permit award without discussions (Option I) when award is to other than the low price of feror. Comments regarding both options are requested.)

Option I for Paragraph (f)

(f) Award without discussion: The Government may accept other than the lowest offer and award on the basis of initial offers received without discussions.

(End of Provision)

Option II for Paragraph (f)

(f) Award with discussion: If the offer selected for award is not the lowest price responsive and responsible offer, written or oral discussions and solicitation of best and final offers will be conducted. As a minimum, the technical deficiencies to be addressed to the offerors in the competitive range will be their individual VRS quality and delivery rates followed by a request for best and final offers.

(End of Provision)

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-25065 Filed 10-23-90; 8:45 am]

BILLING CODE 3910-01-M

Notices

Federal Register
Vol. 55, No. 206
Wednesday, October 24, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Fees and Costs

AGENCY: Administrative Office of the United States Courts.

ACTION: Notice of change in method of assessing the court's registry fee.

SUMMARY: The registry fee assessment provisions published in the **Federal Register**, May 11, 1989 (54 FR 20407), are hereby revised and converted from a one-time charge equal to all income earned in the first 45 days of the investment, to a charge of 10 percent of the income earned while funds are held in the court's registry.

Additionally, due to the practice of some courts of authorizing the investment of funds deposited with the court in proceedings beyond the scope of Rule 67 Fed. Rules of Civ. Proc. and, in recognition of the value to the litigants and obligation of the court to manage such funds, the fee is being extended to any funds placed into the court's registry and invested regardless of the nature of the action underlying the deposit.

EFFECTIVE DATE: December 1, 1990.

FOR FURTHER INFORMATION CONTACT: Assistant Accounting Officer, Accounting Branch, Financial Management Division, Administrative Office of the United States Courts, 1120 Vermont Avenue NW., Washington, DC 20544, (202) 633–6276.

SUPPLEMENTARY INFORMATION: Under its authority at 28 U.S.C. 1913, 1914(b), and 1930(b) to establish miscellaneous fees to be charged and collected by the clerks of courts, the Judicial Conference of the United States in September 1988, authorized the Director of the Administrative Office to impose a fee not exceeding three percent for the handling of registry funds held in the courts and invested in interest-bearing accounts. The fee is to be assessed from and may not exceed interest earnings. The Director was also instructed to review implementation of the fee and make adjustments from time to time.

As a result of a continuing review of the imposition of the fee and in consultation with various committees of judges and clerks concerning proposed revisions, the Director has decided that the fee will be revised from a one-time charge equal to the first 45 days interest earned, to a percentage charge on all income earned while funds are held in the court's registry.

Its application is also being extended to any case, where the court has authorized the investment of funds placed in its custody or held by it in trust in its registry regardless of the nature of the underlying action.

The fee will be deducted periodically, either at the time income is credited to the account or prior to any other distribution. Investments having a maturity date greater than one year will be assessed the fee at the time the investment instrument matures.

The revised fee will be (.10) or $10\% \times i$ where i = the total income received during each income period. For example, $100,000 deposited and invested in a 90-day certificate of deposit earning interest at an annual rate of 7.5% would be assessed a fee of $184.93 on the $1,849.31 interest earned for the quarter. The fee will be deducted at the time the certificate matures or is terminated.
[$100,000 × 7.5% / 365 × 90 days = $1,849.31 interest.]
$1,849.31 × 10% = $184.39 fee

If a second 90-day certificate was purchased upon maturity of the first, the same fee calculation would be applied to the earnings received from the second certificate.

If the investment instrument is in the form of a certificate of deposit which extends over several years, the fee will be 10% of the interest earned over the entire period. For example, if $100,000.00 were invested in a 3-year CD earning 7.5% compounded annually and payable at maturity, the fee would be $2,422.97.
[$100,000 × 7.5%] + [$107,500 × 7.5%] + [$115,562.50 × 7.5%] = $24,229.69 interest.
$24,229.69 × 10% = $2,422.97 fee

This new method of fee assessment recognizes the recurring cost of administering investment holdings over time. It also varies the fee in proportion to the income earned and the length of time the investment is held, and simplifies the computation of the fee for the courts when frequent fluctuations in principal sums placed into the court's registry for investment occur.

The new method of computing the fee will be applied to new investments of funds placed into court beginning on the effective date.

The new method will not be applied on investments in cases from which a fee has been exacted based on the prior method (interest earned in the first 45 days the funds were invested or the first 45 days following July 12, 1989). The new method will also not be applied in cases where the investment instrument has a maturity date greater than one year, but where a fee under the prior method applies but has not been deducted.

Example: In the three-year example above, if the date of the investment was June 23, 1989, the fee based on the prior method would have been $924.66 [$100,000 × 7.5%] / 365 × 45 = $924.66 payable from the interest received when the CD matures. Under the new method, the fee would be $2,422.97. However, because the previous method applies, only $924.66 is charged.

As with other miscellaneous fees authorized under 28 U.S.C. 1913, 1914, and 1930, this fee may be taxed as costs by the court pursuant to 28 U.S.C. 1920. In cases where the United States Government is a party to the action underlying the registry investment, the funds initially withheld in payment of the fee may be restored to the United States upon application filed with the court by the United States Attorney or other government counsel.

The fee does not apply in the District Court of Guam, the Northern Mariana Islands, the Virgin Islands, the United States Claims Court, or any other federal court whose fees are not set under the statutes cited above.

L. Ralph Mecham,
Director.

[FR Doc. 90–25082 Filed 10–23–90; 8:45 am]
BILLING CODE 2210–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Colorado River Basin Salinity Control Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all cost-share payments under the Colorado River Basin Salinity Control Program are made primarily for the purposes of soil and water conservation, protecting or restoring the environment, or providing a habitat for wildlife. This determination is in accordance with section 126 of the Internal Revenue Code of 1954, as amended. This determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service, USDA, room 4714, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, (202) 447–6221; or Director, Land Treatment Program Divsion, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013 (202) 382–1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, 26 U.S.C 126, provides that certain payments made to persons under certain small watershed programs may be excluded from the recipient's gross income for Federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purposes of conserving soil and water resources, protecting or restoring the enivronment, improving forests, or providing a habitat for wildlife * * *." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments. In addition, the Secretary of the Treasury must determine that the particular small watershed program is similar to the other Federal programs listed in section 126.

The Colorado River Basin Salinity Control Program is authorized by section 202(c) of the Colorado River Basin Salinity Control Act, as amended, 43 U.S.C. 1592(c). Funding for this program is allocated through annual Federal appropriations, which provide for financial, technical, and information and education assistance to owners and operators of agricultural land, helping them install improved irrigation water management systems on their land in order to reduce salt load contributions to the Colorado River system.

The Colorado River Basin Salinity Control Program provides financial and technical assistance to private landowners or operators who have control of agricultural lands located in approved project areas and have consented to the installation, management, and maintenance of improved irrigation water management systems that reduce the quantity of salt delivered to the Colorado River.

The purpose of the financial assistance component of the program is to assist landowners or operators with the cost of the installation of improved irrigation delivery and application systems. This cost-share program is administered within USDA by the Agricultural Stabilization and Conservation Service with technical assistance provided by the Soil Conservation Service and information and education assistance provided by the Cooperative Extension Service.

Under the regulations governing the Colorado River Basin Salinity Control Program (7 CFR part 702) county Agricultural Stabilization and Conservation committees (COC) may enter into contracts with individuals or entities that have control of land identified in USDA Salinity Control Reports as land that is contributing to the salt loading of the Colorado River. Funds are allocated to project areas based on annually prepared project implementation plans (PIP). The National Salinity Control Coordinating Committee (SCCC) approves a list of eligible Salinity Reduction Practices (SRP) for cost sharing. Each local SCCC may select from this list those SRP's it will approve for cost sharing.

Costs eligible for cost sharing include, but are not limited to, any necessary approved costs incurred by the landowner or operator to install or implement an approved SRP, such as equipment costs, material and labor, not to exceed a rate established by the COC to be fair and reasonable.

Procedural Matters

The authorizing legislation and the procedures and policies for the Colorado River Basin Salinity Control Program have been examined using the criteria set forth in 7 CFR part 14. The USDA has concluded that the payments made under this cost share program are made to provide financial assistance to eligible persons in carrying out soil and water conservation measures, and protecting or restoring the environment. Furthermore, the Secretary of the Treasury has determined that the Colorado River Basin Salinity Control Program is a "small watershed program" within the meaning of 26 U.S.C. 126. *See* 26 CFR 16A.126–1(d)(1)(D).

A Colorado River Basin Salinity Control Program, Primary Purpose Determination for Federal Tax Purposes, "Record of Decision" has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013; or Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service, USDA, room 4714, South Agricultural Building, 14th and Independence Avenue SW., Washington, DC 20250.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Colorado River Basin Salinity Control Program. In accordance with the criteria in 7 CFR part 14, I have determined that all cost-share payments made under this program are for soil and water conservation, protecting or restoring the environment, and providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for Federal income tax purposes, all or part of such payments made under the Colorado River Basin Salinity Control Program.

Signed at Washington, DC on October 17, 1990.

Clayton K. Yeutter,

Secretary of Agriculture.

[FR Doc. 90–25151 Filed 10–23–90; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

[TB-90-008]

Public Hearing Regarding Establishment of a New Tobacco Auction Market; Georgia

Notice is hereby given of a public hearing regarding an application to establish as a new market Ocilla, Georgia, and to combine the new market with the Fitzgerald, Georgia, tobacco market.

Date: November 1, 1990.
Time: 10 a.m. local time.
Place: Irwin County Court House, Irwin Avenue (Highway 129) Ocilla, Georgia.
Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, Ocilla, Georgia, which would be consolidated with the currently designated market of Fitzgerald, Georgia. The application was made by B.B. Rogers and Richard Rogers, Gold Leaf Warehouses, Fitzgerald, Georgia.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3).

Dated: October 22, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90-25287 Filed 10-23-90; 8:45 am]

BILLING CODE 3410-02-M

[TB-90-009]

Public Hearing Regarding Establishment of a New Tobacco Auction Market; Virginia

Notice is hereby given of a public hearing regarding an application to merge the South Hill and Kenbridge, Virginia, tobacco markets.

Date: October 30, 1990.
Time: 9 a.m. local time.
Place: Conference Room of the Holiday Inn, Interstate 85 and Highway 58, South Hill, Virginia.
Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of South Hill and Kenbridge, Virginia. The application was made by R. R. Gunn, Kenbridge Tobacco Board of Trade, Kenbridge, Virginia.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3).

Dated: October 22, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90-25286 Filed 10-23-90; 8:45 am]

BILLING CODE 3410-02-M

COMMISSION ON CIVIL RIGHTS

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: U.S. Commission on Civil Rights (CCR).

ACTION: Notice.

SUMMARY: The Commission on Civil Rights is evaluating the implementation, enforcement and effectiveness of the Fair Housing Amendments Act of 1988 (FHAA). The proposed, one-time survey of 120 State and local human rights agencies has now been forwarded to OMB for review and clearance under the Paperwork Reduction Act of 1980. Copies of the proposed information collection may be obtained from James S. Cunningham, Director, Office of Programs Policy and Research, U.S. Commission on Civil Rights, 1121 Vermont Ave., NW., Washington, DC 20425, telephone (202) 376-8582. Comments regarding this information collection should be addressed to the OMB Desk Officer: Joe Lackey, Office of Information and Regulatory Affairs, OMB, Room 3208, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James S. Cunningham.

DATES: Comments must be submitted on or before November 23, 1990.

SUPPLEMENTARY INFORMATION:

TITLE: Survey of State and Local Human Rights Agencies.

DESCRIPTION: The proposed survey of 120 State and local human rights agencies will address issues concerning their role in enforcing Title VIII of the Fair Housing Act. Prior to passage of FHAA, these agencies, which had been certified by HUD as operating under a law that was "substantially equivalent" to Federal law, processed most of the cases filed as Title VIII violations. Although FHAA "grandfathered" in all such agencies, they will become ineligible to process Federal cases if they have not been recertified by January 12, 1992. Two years after passage of the 1988 amendments, only three of the 120 currently equivalent agencies have been recertified. Should significant numbers of agencies fail to be recertified, the Federal fair housing enforcement effort could be seriously weakened. The proposed survey will be used to assess: (1) The role of human rights agencies in Federal fair housing enforcement, (2) problems encountered by agencies in seeking recertification under Title VIII, and (3) consequences and policy options available if many agencies fail to recertify.

RESPONDENTS: 120 State and local human rights agencies that have a role in enforcing Title VIII of the Fair Housing Act.

REPORTING BURDEN: The burden for this one-time data collection of a maximum of 120 responses is estimated at 14 hours per response or 1,680 burden hours for reporting; and at 6 hours per response or 720 hours for the record keeper.

Dated: October 19, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90-25157 Filed 10-23-90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered Marine Mammals; Scripps Institution of Oceanography

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Application for Permit, Walter H. Munk Scripps Institution of Oceanography (P470).

SUMMARY: Notice is hereby given that the Applicant has applied in due form for a Permit to take endangered marine mammals as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service Regulations Governing Endangered Fish and Wildlife permits (50 CFR parts 217-222), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Walter H. Munk, Scripps Institution of Oceanography (A-025), Institute of Geophysics and Planetary Physics, La Jolla, California 92093
2. *Type of Permit:* Scientific research
3. *Name of Animals:*

Minke whale (*Balaenoptera acutorostrata*)
Blue whale (*Balaenoptera musculus*)
Fin whale (*Balaenoptera physalus*)
Sei whale (*Balaenoptera borealis*)
Humpback whale (*Megaptera novaeangliae*)

Southern right whale (*Balaena australis*)
sperm whale (*Physeter macrocephalus*)
Killer whale (*Orcinus orca*)
Dusky dolphin (*Lagenorhynchus obscurus*)
Commerson's dolphin (*Cephalorhynchus commersonii*)
Long-finned pilot whale (*Globicephala melaena*)
Southern bottlenose whale (*Hyperoodon planifron*)
Southern elephant seal (*Mirounga leonina*)
Antarctic fur seal (*Arctocephalus gazella*)

4. *Number of Animals*: Applicant estimates that no more than 100 pinnipeds or 10 cetaceans will be harassed during the course of this experiment, depending on the distribution of animals near the test site. All size, sex and age classes of baleen whales, killer whales, Antarctic fur seals, southern elephant seals, and adult make sperm whales may be harassed.

5. *Type of Take*: Acoustic harassment in the course of an experiment to assess potential impacts on marine mammals of acoustic signals designed to detect global ocean warming. Researchers will measure vocalization rates, respiration and direction of swimming to determine whether the behavior of the animals changes in response to the acoustic signal.

6. *Location and Duration of Activity*: January 26 until February 5, 1991, in the vicinity of Heard Island in the Southern Indian Ocean in an area of 40 km radius around a point 53° 14′ South, 74° 31′ East.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., rm. 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910;
Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802;
Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930;
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702;
Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415; and
Administrator, Western Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822–2396.

Dated: October 17, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–25080 Filed 10–23–90; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License; Ross Laboratories

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent 4,842,884, "Formulated Milk Concentrate and Beverage" to Ross Laboratories, a Division of Abbott Laboratories, having a place of business at Columbus, Ohio 43216. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license for the field of infant and medical nutritional products may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention is a formulated milk concentrate emulsion comprising about 25–60% by weight of nonfat dry milk solids, 15–40% by weight of water, 3–40% by weight of a nondairy edible oil, and 0–35% by weight of sugar, wherein the weight ratio of nonfat dry milk solids to water is between 1:0.55 and 1:0.75 and wherein there is no added emulsifier.

The availability of the invention for licensing was published in the **Federal Register** Vol. 53, No. 178, (1988). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487–4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90–25109 Filed 10–23–90; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limit and Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Guatemala

October 19, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit and a guaranteed access level for the new agreement year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on

embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated November 9, 1989 between the Governments of the United States and Guatemala establishes an import limit and a guaranteed access level for cotton textile products in Categories 347/348, produced or manufactured in Guatemala and exported during the period January 1, 1991 through December 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 3079, published on January 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1990.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Memorandum of Understanding (MOU) dated November 9, 1989 between the Governments of the United States and Guatemala; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Guatemala and exported during the period January 1, 1991 through December 31, 1991, in excess of 853,300 dozen.

Imports charged to this category limit for the periods July 1, 1989 through February 28, 1990 and March 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for these periods have been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The level set forth above is subject to adjustment in the future according to the provisions of the MOU dated November 9, 1989 between the Governments of the United States and Guatemala.

Additionally, pursuant to the MOU dated November 9, 1989 and the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on January 1, 1991, a guaranteed access level of 1,000,000 dozen is being established for properly certified textile products assembled in Guatemala from fabric formed and cut in the United States in cotton textile products in Categories 347/348 which are re-exported to the United States from Guatemala during the period January 1, 1991 through December 31, 1991.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–25131 Filed 10–23–90; 8:45 am]

BILLING CODE 3510–DR–M

Permitting Entry of Certain Textile Products Exported From Tanzania

October 19, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain textile products.

EFFECTIVE DATE: October 24, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended (42 FR 1453); Executive Order 12475 of May 9, 1984 (49 FR 19955); section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a letter published in the **Federal Register** on August 17, 1990 (55 FR 33744), the Chairman of the Committee for the Implementation of Textile Agreements (CITA) directed the Commissioner of Customs to deny entry for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340, 341, 347, 348, 640 and 641 which are exported from Tanzania, with Tanzania identified as the country of origin, and presented for entry on and after August 18, 1990, regardless of the date of export.

As a result of an investigation conducted by Commerce and Customs, CITA has identified certain textile and apparel exporters transshipping goods through Tanzania in circumvention of textile agreements negotiated pursuant to Section 204. Accordingly, the Customs Service will deny entry to future shipments from these sources. Additionally, CITA directs the Commissioner of Customs, effective on October 24, 1990, to permit entry of cotton and man-made fiber textile products in Categories 340, 341, 347, 348, 640 and 641 exported from Tanzania.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For the Implementation of Textile Agreements

October 19, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on October 24, 1990, this directive cancels the directive of August 13, 1990 issued to you by the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340, 341, 347, 348, 640 and 641 which are

exported from Tanzania, with Tanzania identified as the country of origin, and presented for entry on and after August 18, 1990, regardless of the date of export.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-25130 Filed 10-23-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Telecommunications Service Priority System Oversight Committee; Establishment

ACTION: Establishment of the Telecommunications Service Priority System Oversight Committee.

SUMMARY: Under the provisions of Public Law 92-463, "Federal Advisory Committee Act," notice is hereby given that the Telecommunications Service Priority System Oversight Committee (TSPSOC) is being established.

The TSPSOC will advise the Manager, National Communications Systems and senior Defense Department officials regarding developments and problems in the Telecommunications Service Priority (TSP) System with the overall objective of recommending actions to correct system faults and prevent their recurrence. Specific aims of the TSPSOC will include: assessing responsiveness of the TSP System to national security and emergency preparedness requirements; reviewing and evaluating the adequacy and currency of policies, procedures and documentation requirements of the TSP System; and, assessing the design, and operation of the TSP System to ensure continued enhancement of capabilities in the light of emerging technological advances.

The TSPSOC will be composed of approximately 18 members, including both federal, state and local government and non-government individuals. Considerable efforts will be made to ensure that the members will be well-balanced as to points of view represented and the requirements of the functions to be performed. Members will be selected from among National Communications Systems organizations, private industry, telecommunications service vendors, and state and local governments.

Dated: October 18, 1990.

Linda M. Bynum,

Alternate OSC Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-25128 Filed 10-23-90; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Intent To Prepare Draft Environment Impact Statement (DEIS) for the Lower Amite River Flood Control, Louisiana, Study

AGENCY: U.S. Army Corps of Engineers, DOD, New Orleans District.

ACTION: Notice of intent.

SUMMARY: The purpose of this study is to investigate measures to provide flood relief to portions of Baton Rouge, Denham Springs, and other communities along the Amite River and its tributaries.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed project and draft EIS should be addressed to: Mr. David Reece, telephone (504) 862-2522 or FTS 493-2522; mailing address—U.S. Army Corps of Engineers, Planning Division (CELMN-PD-RE), P.O. Box 60267, New Orleands, Louisiana 70160-0267.

SUPPLEMENTARY INFORMATION:

1. *Study authority:* This study is being conducted in response to a 1967 resolution of the Committee on Public Works of the United States Senate.

2. *Proposed project:* The purpose of this project is to reduce flood damages in certain areas of the Amite Basin by measures that would either reduce the height of flood stages or protect people and property from floodwaters, or both. Non-structural measures, such as improved floodplain management, will also be investigated.

3. *Alternatives.* Alternatives most likely to be studied in detail include: a 12,000-acre recreation reservoir with an 8,000-acre flood storage pool; a dry reservoir with about 13,000 acres of flood storage capacity; a reservoir with a permanent pool yet to be determined but less than that of the 12,000-acre reservoir; non-structural measures that could stand alone or be conducted with structural measures; and a no-action plan.

4. *Scoping process.* a. Extensive scoping has been done in conjunction with providing flood control measures for the Amite Basin. In 1985, more than 100 persons attended scoping meetings for the state's proposed Darlington Reservoir and, as a result of that scoping, 114 letters of comment were received. Following that scoping, a detailed study was performed under contract by Espey, Huston and Associates for the state. Many of the findings of that investigation will be used by the Corps during the course of the present study. Our present study will examine alternatives similar to those studied by the state, focusing on the same issues of concern. Since 1985, the Corps has continued to interact with state and local officials, as well as various interested groups and individuals, to insure that pertinent issues and concerns are addressed in either a state or Federal study. The scoping document prepared for the 1985 meetings and continued interaction with interested parties, as well as the findings of the study conducted by the state, will guide the course of the present Corps study.

b. Significant issues to be addressed in the EIS include: mineral resources, land use, public safety, fisheries, recreation resources, water quality, displacement of people, wildlife, aquatic habitat, property ownership and values, community cohesion, timber, endangered species, public services and facilities, swamps, cultural and historic resources, bottomland hardwoods, riparian habitat, aesthetics, community and regional growth, agriculture, business and industrial activity, upland hardwoods, natural and scenic streams, local government finance and tax revenues, and economic costs and benefits.

c. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the U.S. Fish and Wildlife Service on endangered species. Also, coordination will be maintainted with the U.S. Soil Conservation Service regarding prime and unique farmlands. The Agricultural Stabilization and Conservation Service will be consulted regarding the "Swampbuster" provisions of the Food Security Act. The Corps will prepare a section 404(b)(1) Evaluation for review by the U.S. Environmental Protection Agency. Coordination will be maintained with the Advisory Council on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Lousiana Department of Wildlife and Fisheries will be contacted concerning impacts to Natural and Scenic Streams. Application will be made to the Louisiana Department of Environmental Quality for a Water Quality Certificate.

d. A 45-day review period will be allowed so that all interested agencies, groups, and individuals will have the opportunity to comment on the draft report and EIS.

5. *Scoping meeting.* Since extensive scoping has already occurred, no additional formal scoping meetings will be scheduled.

6. *Availability.* The draft report and EIS are scheduled to be available to the public during the summer of 1992.

Dated: October 1, 1990.

Richard V. Gorski,

Colonel, U.S. Army, District Engineer.

[FR Doc. 90-25108 Filed 10-23-90; 8:45 am]

BILLING CODE 3710-84-M

Office of the Secretary

Defense Nuclear Agency; Membership of the Performance Review Board

AGENCY: Defense Nuclear Agency, DOD.

ACTION: Notice of membership of the Defense Nuclear Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Nuclear Agency (DNA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board shall provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance and performance awards to the Director, Defense Nuclear Agency.

EFFECTIVE DATE: The effective date of service for the appointees of the DNA PRB is on or about 19 November 1990.

FOR FURTHER INFORMATION CONTACT: D. Dial-Alfred, Policy Branch (CVPO), Defense Nuclear Agency, Washington, DC 20305-1000, (703) 325-7593.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the DNA PRB are set forth below. All are DNA officials unless otherwise identified:

Dr. George W. Ullrich, Deputy Director
Major General Walter E. Webb, USAF, Director for Operations
Mr. Robert L. Brittigan, General Counsel
Mr. Curtis L. Dierdorff, Director of Personnel, Defense Mapping Agency
Dr. Spiros G. Pallas, Special Assistant to the Deputy Director for Tactical Warfare Programs, Office of the Secretary of Defense

The following DNA officials will serve as alternate members of the DNA PRB, as appropriate:

Dr. E. John Ainsworth, Scientific Director
Mr. John M. Bachkosky, Director for Plans, Programs and Requirements
Dr. Paul H. Carew, Comptroller
Mr. Frederick S. Celec, Deputy Director for Operations
Mr. Jonathan Z. Farber, Special Assistant to the Deputy Director
Mr. David G. Freeman, Director, Acquisition Management Office
Dr. Kent L. Goering, Chief, Structural Dynamics Division
Mr. Richard L. Gullickson, Chief, Electromagnetic Applications Division
Dr. Don A. Linger, Director for Test
Mr. Clifton B. McFarland, Jr., Chief, Weapons Effects Division
Mrs. Joan Ma Pierre, Director for Radiation Sciences
Mr. Robert C. Webb, Chief, Electronics Effects Division
Dr. Leon A. Wittwer, Chief, Atmospheric Effects Division

Dated: October 18, 1990

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 90-25127 Filed 10-23-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Implementation Plan for Conducting Systematic Evaluation Program at the Rocky Flats Plant; Response to Recommendation 90-5 of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for Public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2285(d), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 90-5 of the Defense Nuclear Facilities Safety Board, concerning an implementation plan for conducting a Systematic Evaluation Program at the Rocky Flats Plant. DOE hereby requests public comment on the response of the Secretary to Recommendation 90-5.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before 30 days from the date of this notice.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: October 18, 1990.

Donald F. Knuth,

Deputy Assistant Secretary for Operations, Defense Programs.

October 15, 1990.

The Honorable John T. Conway,
Chairman,
Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC, 20004.

Dear Mr. Chairman: In accordance with Section 315 of Public Law 100-456 and with Defense Nuclear Facilities Safety Board Recommendation 90-5, which I accepted in my June 13, 1990, letter to the Board, I am enclosing the Department of Energy's (DOE) implementation plan for conducting a Systematic Evaluation Program at the Rocky Flats Plant. This program has already been initiated. We will keep you informed of our progress.

Our implementation plan is designed to take full account of the experience gained by the commerical power reactor industry under the Systematic Evaluation Program developed by the Nuclear Regulatory Commission to assess the safety adequacy of design at several of the older power reactors. As a result we believe that the overall concept and much of the detailed content of this plan can be equally applicable to other DOE facilities.

In connection with the above, I wish to take this opportunity to inform you that I have directed that a Systematic Evaluation Program also be initiated for the reactors at the Savannah River Site. We will keep you informed of our progress in executing this program as well.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

SYSTEMATIC EVALUATION PROGRAM ROCKY FLATS PLANT IMPLEMENTATION PLAN

1.0 Introduction

1.1 Purpose

The structures and equipment at the U.S. Department of Energy (DOE) Rocky Flats Plant were, for the most part, designed and placed in operation long before current technical standards and criteria, design bases, and analytical procedures applicable to such structures and equipment were developed. In some cases, the design of these structures and equipment falls short of providing protection against natural phenomena and extreme conditions comparable to that which would be provided in facilities recently built. There is, therefore, a need to systematically assess the safety significance of

differences between the facility designs at Rocky Flats and more modern standards to ensure that a balanced and integrated level of safety is achieved for long-term operation of the Rocky Flats Plant.

In the short-term, before plutonium operations are resumed, numerous safety and operational improvements will have been implemented. A DOE operational readiness review will also have been conducted to conform that these improvements are in place and effective. These efforts will include the actions necessary to respond to Defense Nuclear Facilities Safety Board recommendations 90–4, "Operational Readiness Review," and 90–6, "Critically Safety at the Rocky Flats Plant."

With the completion of these efforts, the Department believes that the health and safety of the public will be assured during the conduct of plutonium operations while a systematic evaluation program as described below is completed.

Accordingly, DOE will develop and implement a Systematic Evaluation Program (SEP) at the Rocky Flats Plant, to commence as soon as practicable and be completed over about the next 4 years. The DOE has discussed this completion date with the Board, which finds it responsive to the Board's recommendation. The reasons and justification for the 4-year completion schedule will be communicated to the appropriate congressional committee in accordance with the requirements of law. The purpose of the SEP is to establish an integrated approach to assessing the design adequacy of the current Rocky Flats facilities from a safety point of view and to establish a basis for defining any needed facility improvements. The SEP will address all outstanding safety issues related to design and include, but not be limited to, consideration of the following items:

- Severe external events, with particular emphasis on seismic events, high winds, externally initiated fire, and airplane crashes;
- Severe internal events, with particular emphasis on internally initiated fire or explosion, flooding, chemical reactions, and accidental criticality;
- Ventilation system performance under severe extental and internal events, including redundancy considerations; and
- Systems interaction.

An integrated assessment of the results of the evaluation, including criteria and procedures for making backfit decisions, will permit appropriate emphasis to be given to improving safety defense in depth at the Rocky Flats Plant. Experience with an SEP at the Nuclear Regulatory Commission (NRC) showed that an integrated assessement process provides an effective and efficient means to resolve a large number of interrelated issues and make balanced decisions regarding the need for improvements in plant safety.

1.2 Background

In 1977, the NRC initiated a Systematic Evaluation program to review the designs of older operating nuclear power plants to reconfirm and document their safety. Phase I of the SEP identified the safety topics to be reviewed and corresponding acceptance critiera. Phase II was the review of these topics for 10 older operating plants, including 5 of the oldest. The plant reviews consisted of comparision of the existing plant design against the current licensing criteria. Subsequently, the differences from current licensing criteria were evaluated in an integrated assessement to determine their relative safety signficance and the appropriate corrective action on a plant-specific basis. The purpose was not necessarily to bring the older plants into compliance with the newer requirements, but rather to ensure that the safety issues addressed by the requirements were either not present, or were adequately treated by the older plants. For example, administrative controls may be provided adequate resolution of issues addressed by design features in later plants. Initial reports from the NRC's SEP were issued in 1982.

The NRC SEP took place at a number of facilities over a period of about 5 years. Although some facility improvements were accomplished during this period, the concept of making plant specific improvements on the basis of integrated assessment meant that most improvements could not be implemented until the SEP was completed at the specific plant.

1.3 Terms and Definitions

The following terms and definitions are used within the SEP:

Topic—A technical subject selected for evaluation within the SEP. The identification of topics is based on consideration of a board range of technical issues, requirements, and potential topics. Topics may vary signficantly in scope.

Safety objective—A concise summary of the basic safety function(s) of the structures, systems, and components associated with a topic with respect to normal operation and design basis events. The safety objective is to be used to assess the significance of any deviations from current design requirements that may be identified during the SEP.

Current design requirements—Current DOE technical requirements for a topic applicable to new design activities. Commercial nuclear and industrial standards other than those currently referenced in DOE requirements will be considered in establishing design requirements, where necessary.

Acceptance criteria—Technical requirements for a topic to be used in the SEP evaluation of the topic. These criteria are to support the safety objective for their respective topic, but they may be less conservative than current design requirements.

Evaluation methodology—Technical approaches and methods to be applied in the evaluation of the facilities at the Rocky Flats Plant to determine how they measure up to the topic acceptance criteria. These methods may include deterministic analyses of selected design basis events, risk assessments to determine the contribution of the topic to overall facility risks, tests, design reviews, or as-built verifications.

2.0 Program Description

2.1 Scope

The SEP will focus primarily on public health and safety risks associated with accident prevention and mitigation. Significant contributors to the public risk resulting from normal operations, that are identified by the SEP, will also be addressed.

Worker safety within a particular facility will be considered when the SEP is applied to that facility. However, public safety is the primary reason for the SEP, and secondary emphasis will be placed on occupational hazards.

The SEP will provide for the early identification and timely resolution of any significant safety deficiencies discovered during the implementation of the program. The Rocky Flats Plant Issues Management Program will provide the necessary mechanism to ensure early evaluation of these significant safety deficiencies.

The Rocky Flats SEP will not address environmental, waste, emergency planning, and security issues, except to the extent that they are involved in the prevention and mitigation of the safety risks defined above. The SEP will not include upgrades of the plant required for the resumption of plutonium operations. However, the SEP will take account of the upgrades made before resumption.

The SEP at the Rocky Flats Plant will include all high and moderate hazard facilities, as defined in DOE Order 5481.1B, and any other facilities which perform a special function required for accident mitigation or emergency management. The SEP will focus on assessing the safety of structures, systems, and components. Operator training, maintenance, organization and management, planning, etc., will not be addressed, except to the extent that they directly affect the functional capability and safety performance of the structures, systems, and components.

The SEP to be performed at the Rocky Flats Plant will be somewhat broader than the SEP performed by the NRC, which was limited to public health and safety risks associated with accident prevention and mitigation. It will not cover the same scope as the NRC's Integrated Safety Assessment Program, which provided the regulatory framework for plant-specific resolution of significant SEP issues, all pending licensing actions, changes in regulatory requirements, and dominant contributors to risk.

The schedule and budget for the required SEP improvement actions will be accomplished outside of the SEP as a part of the normal budget and schedule process for the Rocky Flats Plant. Provisions will be established for tracking the implementation and closure of these SEP-related improvement actions, including an appropriate change control process.

2.2 Approach

The program will be carried out in four phases. The SEP will consist of three phases: identification and selection of the topics and requirements; performance of evaluation; and development of an integrated program of improvements. These will be followed by the fourth phase: implementation. These phases are described more fully in Section 3, below. Plans describing the objectives, procedures, and decision criteria for each phase of the SEP will be developed by the Rocky Flats contractor and approved by DOE. Upon the completion for each phase, a report will be prepared by the Rocky Flats contractor describing implementation and results, with special attention to any changes made to the original plan. DOE will issue a report on its evaluation of the contractor's report for each phase of the SEP.

A project management plan and quality assurance plan, developed by the contractor and approved by DOE, will provide for appropriate documentation and approval of any needed changes from the approved plans. Plan changes, if any, and the justification for the changes will be reported in quarterly reports, as well as in the final report for each phase.

Responsibilities and functions are specified in Section 4.

All plans and reports, including quarterly progress reports, will be submitted to the Defense Nuclear Facilities Safety Board upon receipt at DOE Headquarters.

2.3 SEP Objectives

DOE has established the following objectives for the Systematic Evaluation Program to be conducted at the Rocky Flats Plant:

(a) Compare structures, systems, and components in moderate and high hazard facilities with acceptance criteria for significant safety issues (topics).

(b) Evaluate departures from acceptance criteria, and provide for early identification of significant deficiencies for timely resolution.

(c) Decide on a program of plant improvements based on an integrated assessment.

(d) Assure that the SEP topic evaluations are brought to closure, and that provisions exist for tracking the implementation and closure of SEP-related plant improvements.

(e) Coordinate with other related programs at the Rocky Flats Plant, such as the upgrade of Safety Analysis Reports.

(f) Document the procedures, decision criteria, and results of each phase of the SEP.

2.4 Assumptions

The scope and approach for the SEP have been developed on the basis of the following assumptions:

- The other evaluation and upgrading programs for the Rocky Flats Plant (e.g., security, Safety Analysis Reports) will be implemented in reasonable accordance with current plans and schedules;
- DOE's new backfit policy will be available to guide decisions to be amde in Phase 3 of this SEP;
- The existing program control and tracking systems will allow individual facility improvements derived from the SEP to be identified and tracked to resolution within the context of the overall plant program of upgrades and improvements.

3.0 Detailed Technical Approach

This section describes the four phases of activity that constitute DOE's overall program for defining and implementing integrated safety improvements in the structures, systems, and components at the Rocky Flats Plant. The first three phases constitute the SEP, and the fourth phase covers implementation of any identified improvements.

Phase 1, "Topic Selection and Development of Evaluation Plans," includes the selection of SEP topics and development of a topics list, the definition of safety objectives, the identification of current design requirements, the definition of acceptance criteria and methodologies for the evaluation, and the planning for the detailed evaluation of each topic.

Phase 2, "Evaluation of Topics," includes evaluation of structures, systems, and components for each topic, determination and ranking of the safety significance of deviation(s) from criteria, for resolution of immediate safety concerns, identification of options for resolution of remaining deviations, and initial decisions for implementation of low cost improvements. Throughout this process an acceptable safety-safeguards interface will be maintained. In determining the safety significance of an item, the following attributes will be considered: an increase in the frequency of a plutonium release, an increase in the consequences of a plutonium release, a reduction in the safety margin that is provided to guard against a plutonium release, or identification of an Unreviewed Safety Question.

Phase 3, "Integrated Assessment," includes identification of improvement alternatives for the higher cost improvements, assessment of inter-relationships of topics and improvement alternatives, cost-benefit analyses and evaluations, and decisions regarding needed improvements. This effort will result in the identification and ranking of proposed improvement actions for the Rocky Flats Plant.

Phase 4 includes the planning, budgeting, and implementation of the improvements proposed as a result of the SEP integrated assessment.

3.1 Phase 1: Topic Selection and Development of Evaluation Plans

Phase 1 will include the identification and selection of potentially significant safety topics to be evaluated in the SEP and definition of the evaluation criteria and methodology to be used for evaluating each topic. An SEP Phase 1 Plan and Schedule will be developed by the Rocky Flats contractor and submitted to DOE for approval. The Phase 1 Plan will include more detailed instructions for performance of the Phase 1 activities.

3.1.1 Topic Selection

The topic selection activity will include the identification and selection of safety topics to be evaluated within the SEP at the Rocky Flats Plant. The identification of potential SEP topics is to include reviews of:

- Experience and operating history at Rocky Flats and other comparable facilities, including input from experts on plutonium processing facility design and operations;
- Technical issues contained in the Rocky Flats Plant Issues Management system; and
- NRC experience with commercial reactor SEPs, and commercial nuclear industry issues as identified in NRC generic licensing and inspection activities.

The topic selection process will consider sources of information from a broad perspective, including DOE orders and requirements, SEP experience gained from the commercial reactor sector, and other relevant documents such as NRC Regulatory Guides for plutonium facilities.

Potential topics are to be combined into a single master list of potential SEP topics. When combining these lists, the topics will be reviewed and screened using criteria similar to those applied in the NRC SEP. For example, redundant topics and topics not applicable to the Rocky Flats facilities may be deleted, and related and similar topics will be combined. In addition, topics may be deleted based on an assessment of potential safety significance, and the basis for deletion will be documented. Topic selection criteria are to be defined in the Phase 1 Plan. The underlying criterion for the SEP is that the topic must be of sufficient safety significance to warrant evaluation within the SEP. The resultant topics will be organized, to the extent practical, to align with the NRC standard format guide for safety analysis reports for plutonium processing facilities.

3.1.2 Acceptance Criteria and Evaluation Methodology

Safety objectives, current design requirements, acceptance criteria, and evaluation methodologies will be defined and documented for each of the selected topics. This process will consider the current design requirements defined in regulations and DOE orders, as well as the current industry requirements, standards, or practices.

3.1.3 Evaluation Plan

An evaluation plan will be developed for the evaluation of each topic. The development of the topic evaluation plans is to include the identification of any previous or ongoing safety evaluations at the Rocky Flats Plant that will be incorporated within the SEP evaluation of the topics, and the definition of interfaces with related topics. The topic evaluation plans will be directed towards identifying deviations from the acceptance criteria, with a focus on meeting the safety objectives of the topic with respect to identified design basis events.

3.1.4 Phase 1 Report

The results of the Phase 1 activities will be documented by the Rocky Flats contractor in a Phase 1 Report, which will include the final SEP topics list, and for each topic the safety objectives, current design requirements, acceptance criteria, evaluation methodology, and the topic evaluation plan. DOE will issue a report of its evaluation of the contractor's Phase 1 Report.

3.2 Phase 2: Evaluation of Topics

An SEP Phase 2 Plan and Schedule will be developed by the Rocky Flats contractor and submitted to DOE for approval. The schedule for the evaluation of each topic or group of topics will be developed based on a relative ranking of the topics. This ranking will take into consideration the potential safety significance of the topic, relationship to other topics, sequential requirements, and other factors.

Phase 2 of the SEP will include the evaluation of the SEP topics and the definition of any proposed facility improvements. The evaluation of each topic will be performed in accordance with the topic evaluation plan. The evaluation will identify and address differences and departures between the existing facility configuration and the acceptance criteria. If the evaluation determines that the safety objectives, current design requirements, and acceptance criteria are met, the topic will be closed with no further action required, other than documentation of the basis for reaching this conclusion. The safety significance of any deviations from current design requirements will be evaluated with respect to the safety objectives and to determine if the acceptance criteria are met.

If potential Unreviewed Safety Questions are identified during the SEP, they will be promptly referred to plant managers for processing and resolution. Prompt corrective actions will be taken where necessary for protection of the health and safety of the public. If Unreviewed Safety Questions are identified early in the SEP program that could affect resumption of operations, prompt notification to management will be made and appropriate actions will be taken to resolve the questions or to suspend any associated plutonium operations that may have been resumed.

Those deviations from acceptance criteria that can be resolved at a low cost (for example, procedure or programmatic changes), will be identified for early action. If the deviation is determined to be of minor or no safety significance, the topic will be closed.

At the conclusion of the evaluation of each topic, the results will be documented in an evaluation report for that topic. Where appropriate, the topic evaluation reports will include proposed action(s) to resolve deviations from acceptance criteria.

The results of the Phase 2 evaluations will be documented in a Phase 2 Report prepared by the Rocky Flats contractor. DOE will issue a report on its evaluation of the contractor's Phase 2 Report.

3.3 Phase 3: Integrated Assessment

An SEP Phase 3 Plan and Schedule for the integrated assessment will be prepared by the Rocky Flats contractor and submitted to DOE for approval.

Upon completion of the Phase 2 evaluation of all topics, an integrated assessment of the SEP Phase 2 results and proposed improvement actions will be performed. This effort will include consideration of alternative means of satisfying the safety objective for each topic. The integrated assessment will be performed in accordance with a documented decision process, which will include the following considerations:

- Interrelationship between individual topics and the associated actions for improvement;
- Relationships between other ongoing DOE defense complex programs, e.g., Defense Programs modernization, and SEP proposed actions for improvement;
- Cost-effectiveness of proposed actions with respect to a reduction in risk to the public health and safety;
- DOE's new backfit policy, including alternative actions for improvement;
- Remaining facility lifetime; and
- Improvements in defense in depth provided by safety systems and administrative controls.

The integrated assessment will result in the definition of an integrated set of recommended improvement actions. These proposed improvement actions will be ranked in broad categories of significance to facilitate the subsequent budgeting and scheduling of proposed

plant improvement projects. The SEP will ensure that provisions have been made for tracking the proposed improvements to completion. However, the planning, budgeting, and implementation of the improvements will be carried out in Phase 4.

The results of the integrated assessment process will be documented in a Phase 3 report by the Rocky Flats contractor. DOE will issue a report on its evaluation of the contractor's Phase 3 Report.

3.4 Phase 4: Implementation

Upon completion of the integrated assessment as documented in the Phase 3 Report, the recommended SEP corrective actions and improvements will be planned and scheduled. This process will include ranking the proposed actions consistent with other ongoing or future programs to upgrade the Rocky Flats Plant, and obtaining necessary approvals including any required for NEPA.

4.0 Administration of the Program

4.1 Responsibilities

The principal DOE responsibility for the SEP at the Rocky Flats Plant is assigned to the Deputy Assistant Secretary for Facilities, Defense Programs. To ensure adequate DOE management direction to the SEP and ongoing oversight of the SEP implementation, these responsibilities are delegated, through the Defense Programs management chain, to the DOE Systematic Evaluation Program Manager. The DOE SEP Manager is responsible for development of overall SEP policy, program development, budget preparation and justification, and broad program direction. The SEP Manager will ensure proper involvement of affected DOE Headquarters staff in the Rocky Flats SEP, and proper coordination and approval of SEP plans and reports.

The DOE Rocky Flats Office SEP Coordinator is responsible for the routine DOE activities of the SEP, consistent with the SEP Implementation Plan for the Rocky Flats Plant and directions from the DOE SEP Manager. The DOE Rocky Flats Office SEP Coordinator is to be the point of contact for routine information flow from the Rocky Flats Contractor to Headquarters.

The Rocky Flats Contractor has principal responsibility for the implementation of the Rocky Flats SEP consistent with the SEP Implementation Plan and the DOE approved plans for each Phase of the SEP. This responsibility includes: development and maintenance of the Project Management Plan, the Quality Assurance Plan, and the detailed plans for Phases 1, 2, and 3; implementation of Phases 1, 2, and 3; preparation of reports to document the results of each Phase; and coordination of plans and reports with DOE for review and approval. The Rocky Flats contractor is responsible for assembling the necessary team to ensure effective execution of the SEP.

4.2 Project Management Plan

A Project Management Plan (PMP) will be developed for the Rocky Flats SEP by the Rocky Flats contractor in accordance with the requirements of DOE 4700.1, "Project Management System." The PMP is to document the plans, schedules, and systems that those responsible for managing the project are to use.

The Rocky Flats SEP PMP is to include:

(1) Project Summary (including a project description and objectives).

(2) Project Milestones (Levels 1 and 2).

(3) Work Breakdown Structure (Levels 1, 2, and 3).

(4) Activity Network (to reflect sequences and dependencies).

(5) Organization and Responsibilities (for both DOE and the Rocky Flats Contractor).

(6) Budget.

(7) Reporting and Review Process.

4.3 Quality Assurance Plan

A Quality Assurance Plan (QAP) will be developed for the Rocky Flats SEP in accordance with the requirements of DOE 4700.1, "Project Management System," DOE 5700.6B, "Quality Assurance," and ANSI/ASME NQA-1. NQA-1 has been chosen as the basic document since it is endorsed by DOE 5700.6B as the preferred standard for nuclear facilities. The purpose of the QAP is to provide adequate confidence that the Rocky Flats SEP objectives are accomplished, and that SEP activities are performed in a controlled manner to meet technical and documentation requirements.

Development of the QAP is to include identification of the quality assurance elements which are applicable to each phase of the Rocky Flats SEP, and definition of the specific requirements for each element. The QAP will include activities and responsibilities for the Rocky Flats contractor and for interfaces with DOE.

The QAP is to include provisions for establishment and implementation of a change control process for the Rocky Flats SEP. This change control process will not include those change controls associated with the implementation of the SEP improvements because they are outside the scope of the SEP.

The QAP is to be developed and maintained by the Rocky Flats contractor and approved by DOE. Annual reviews of the QAP are to be performed to assure that the plan is kept current.

5.0 Schedule

Phase I of the SEP will be completed within 1 year of the issuance of this Implementation Plan. The Phase I report will include a schedule for the remaining phases. DOE will provide quarterly progress reports to keep the Board apprised of the status of progress being made toward completion of the SEP. In the event that additional time is necessary to complete a phase, or in the event that changes or supplements are required for already issued reports, DOE will promptly inform the Board and indicate the reasons justifying the change in the schedule or report content.

[FR Doc. 90-25155 Filed 10-23-90; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Availability Announcement of the Alternative Cost Determination for Fiscal Year 1990 Billing Credits Solicitation

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of availability. BPA File No.: BCR-3. BPA is announcing the availability of the Alternative Cost Proposal in the BPA Billing Credits Solicitation.

SUMMARY: BPA, in compliance with its Billing Credits Policy, as amended August 30, 1984 (48 FR 20275), has determined the alternative costs for the Billing Credits Solicitation. The alternative costs represent the estimated costs BPA would incur as a result of acquiring new resources to meet future firm load obligations. These alternative costs are consistent with BPA's Resource Program. BPA is willing to commit to these Alternative Costs for the full duration of billing credit contracts signed pursuant to this Billing Credits solicitation. These alternative costs form the basis for billing credits for conservation activities, and the upper limit on the amount of a billing credit for a resource other than conservation.

Responsible official: Paul Norman, Billing Credits Project Manager, is the official responsible for BPA's alternative costs.

DATES: Alternative costs are effective immediately.

FOR FURTHER INFORMATION CONTACT: For a copy of the BPA alternative costs, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Telephone numbers, voice/TTY, for the Public Involvement office are: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Richard Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, room 450, 304 North Eighth Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

The alternative costs represent the estimated costs which BPA would incur as a result of acquiring new resources to meet future firm load obligations. These alternative costs reflect BPA's cost of acquisition, and are set forth in the way these costs would be recovered in BPA's rates for firm electric power.

A. Basis for Alternative Costs

These alternative costs stem from the BPA Resource Program analysis, and are therefore consistent with the Resource Program. These alternative cost determinations agree with resource offers which are currently being considered by BPA. Part of BPA's alternative cost analysis was a survey of current market conditions, and BPA found that other resource developments and purchases in the region today also agreed with BPA's alternative cost determinations.

BPA is willing to commit to these alternative costs for the full duration of billing credit contracts signed in this first round of billing credits. However, new alternative costs would be calculated for subsequent billing credit solicitations, and the methodology and assumptions for deriving these new alternative costs may change significantly from those relied on today.

BPA expects to have completed at least one round of competitive solicitations prior to the next billing crdit solicitation, and this should provide additional information about the cost of future resource acquisitions.

These alternative costs form the basis for billing credits for conservation activities, and the upper limit on the amount of a billing credit for a resource other than conservation.

B. Alternative Resource Types

The Resource Program analysis and market surveys indicated that a single resource type cannot be considered as the alternative resource. There are several types of potentially cost-effective resources available for acquisition, all at about the same real levelized cost. These alternative resource types include:

- Cogeneration.
- System purchases.
- Displaceable purchases.
- Small hydro.
- Conservation.
- Combustion turbines (CT).

Therefore, rather than base the alternative costs on a single resource type, a range of alternative cost streams was identified, based on the range of alternative types of resources available to BPA for acquisition. The range of cost streams reflects the different fixed-to-variable cost ratios for these resource alternatives. These alternative cost streams differ in terms of the first year cost and rate of increase over time of the total alternative cost, but not in terms of the real levelized value of the alternative cost. Some resources, like small hydro, are capital intensive with most of the cost being fixed over time, while other resource types such as combustion turbines and displaceable purchases have costs that are predominantly composed of variable, or operating costs. One advantage of having a range of alternative cost streams is that it allows an alternative cost stream to be chosen which is most consistent with the cost stream of the billing credit resource.

C. Adjustment for Resource Characteristics

Since resource operating characteristics may have a significant effect on the cost of the resource to BPA, differences between the operating characteristics of the alternative cost resource and the billing credit resource must be taken into account.

These important characteristics are:

Capacity: The amount of capacity the resource would provide, or peak load reduction it would cause.

Seasonal distribution: The amount of firm energy the resource provides or saves in each month.

Displaceability: The ability to displace a resource when substitute sources of energy are available at lower operating costs.

BPA has estimated the marginal value of each of these resource characteristics, and will adjust the benchmark alternative costs as necessary to account for any differences between the alternative resource and the actual billing credit resource.

A special case of this potential adjustment to alternative costs is the Puget Sound Area of Western Washington. This area is a net importer of electric power, principally from regions east of the Cascades. This circumstance, coupled with rapid load growth in the area, is expected to cause voltage instability problems in the area under certain contingencies (*e.g.*, extremely cold weather, temporary loss of transmission lines). This voltage instability could result in reduction in service quality throughout the area, including blackouts. BPA and utilities serving the area are examining alternative solutions to this problem, including the acceleration of conservation programs and the development of additional generation within the area. To the extent that BPA can estimate the value of a billing credits proposal as it serves to alleviate the voltage instability problem, credit will be given in the evaluation.

D. Final Alternative Costs Determination

The alternative costs and adjustment values included in the solicitation are not sufficient to allow customers to determine the exact final alternative cost that would be included in a billing credit contract. The information in this solicitation does allow an approximation of the alternative cost. However, the final alternative cost determination for contract approval will be subject to BPA's evaluation of the

billing credit resource characteristics and contract negotiations.

II. Benchmark Real Levelized Alternative Costs

BPA's benchmark alternative costs are listed in Table 1. These alternative costs are presented in real levelized values (1990 dollars), for different on-line dates and various contract terms. These are called "benchmark" alternative costs because they will typically need to be adjusted to reflect the operating characteristics of a particular billing credit resource.

TABLE 1.—BENCHMARK REAL LEVELIZED ALTERNATIVE COSTS

[Mills per kWh (1990 Dollars)]

Resource life	1992	1993	1994	1995	1996
5	25.0	25.3	25.5	25.8	26.0
10	25.9	26.2	26.4	26.7	26.9
15	26.8	27.0	27.3	27.5	27.8
20	27.7	28.0	28.2	28.5	28.7
25	28.5	28.8	29.2	29.6	30.0
30	29.2	29.7	30.2	30.7	31.2
35	30.0	30.6	31.2	31.9	32.5
40	30.7	31.5	32.3	33.0	33.8
45	31.5	32.4	33.3	34.2	35.1
50	32.2	33.2	34.3	35.3	36.3

III. Nominal Alternative Costs

A. Introduction

The real levelized alternative costs described above are the basis for the nominal alternative costs upon which billing credits are actually computed.

Real levelized costs exclude the effects of inflation on resource costs. "Nominal" alternative costs include the effects of inflation, and are not levelized. Nominal alternative costs represent the actual year-by-year payments BPA would expect to make if it adquired the alternative resources.

B. Alternative Resource Types

As explained previously, BPA might acquire any of several types of resources, all at approximately the same real levelized cost. These resource types fall into three basic categories:

a. Hydro-type resources, with high capital costs and low variable cost. Nominal costs for these resources tend to start high, but do not rise very fast over the project life.

b. Cogenerative and system purchases. The fixed-to-variable cost ratios on these resouces vary, but tend to be more evenly split than for hydro-type resources.

c. Combustion turbine and displaceable purchases. These resources have low capital costs, but high variable costs. Consequently, their annual costs are low at first, but are subject to substantial escalation over time.

C. Fixed and Variable Alternative Costs

The nominal alternative costs have been divided into fixed and variable components. Table 2 shows the fixed, variable, and total alternative costs for the first contract years, expressed in 1990 dollars, corresponding to the benchmark real levelized alternative costs presented previously for two different on-line dates, two different contract terms, and for the three resource types described above.

The fixed component represents the annual payment to recover the capital cost of the alternative resource.

The variable component of the nominal alternative cost will be specified in 1990 dollars when the contract is signed, and then will be adjusted for each year of the contract by multiplying by the ratio of the Gross National Product (GNP) deflator index for each contract year to the GNP deflator index in 1990 to account for the effects of general inflation.

TABLE 2.—NOMINAL FIRST YEAR ALTERNATIVE COST: EXPRESSED IN 1990 DOLLARS

	Var cost (mills/kWh)	Fix Cost (mills/kWh)	Total (mills/kWh)
On-Line 1992:			
Displaceable Purchase/CT-Type Resource 20 yr Life	21.5	9.3	30.8
Displaceable Purchase/CT-Type Resource 40 yr Life	21.5	18.1	39.6
Cogen/System Sale-Type Resource 20 yr Life	14.3	21.9	36.2
Cogen/System Sale-Type Resource 40 yr Life	14.3	34.3	48.6
Hydro-Type Resource 20 yr Life	4.1	36.2	40.3
Hydro-Type Resource 40 yr Life	4.1	52.4	56.5
On-LIne 1996:			
Displaceable Purchase/CT-Type Resource 20 yr Life	23.6	7.8	31.4
Displaceable Purchase/CT-Type Resource 40 yr Life	23.6	20.4	44.0
Cogen/System Sale-Type Resource 20 yr Life	15.4	20.4	35.8
Cogen/System Sale-Type Resource 40 yr Life	15.4	36.2	51.6
Hydro-Type Resource 20 yr Life	5.1	36.2	41.3
Hydro-Type Resource 40 yr Life	5.1	56.5	61.6

D. Example Nominal Cost Streams

Table 2 shows the nominal fixed, variable, and total alternative costs for three resource types corresponding to the 27.7-mill real levelized benchmark alternative cost for a 20-year resource and 40-year resource for 1992 and 1996 on-line dates. These nominal costs would correspond with the benchmark real levelized alternative costs from Table 1 of 27.7 and 30.7 for the 1992 on-line date (20-year and 40-year resource life, respectively) and 28.7 and 33.8 for the 1996 on-line date (20-year and 40-year resource life, respectively).

E. Adjustment of Fixed Alternative Costs

The nominal fixed alternative costs presented here are based on certain assumptions about how the alternative resources would be financed, and how BPA would pay those capital costs. There is no way of knowing in advance exactly how the fixed costs of the alternative resources would be shaped over the resource life, because financing arrangements can vary dramatically from resource to resource. In addition, the actual operating life of the alternative resources may vary from what is assumed here.

Because of this uncertainty, BPA is willing to adjust the shape of the fixed component of alternative cost. Shapes different from those shown here may be proposed by customers, and will be considered by BPA. Limitations on BPA's willingness to change the shape of alternative costs are:

a. That the real levelized alternative cost not increase,

b. That the new shape be one which BPA might reasonably expect to actually face on a resource acquisition, and

c. That the change in shape is to accommodate some real financing constraint or resource characteristic which makes the fixed cost shapes presented here unworkable for a particular billing credit resource.

IV. Materials Available

Copies of the BPA Billing Credits Solicitation (July 1990) and the BPA Billing Credits Policy (August 1984) are available from BPA's Public Involvement office. Refer to the "For Further Information Contact" section of this notice.

Issued in Portland, Oregon, on October 15, 1990.

James J. Jura,

Administrator.

[FR Doc. 90-25153 Filed 10-23-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF85-292-004, et al.]

Archbald Power Corporation, et al. Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 16, 1990

Take notice that the following filings have been made with the Commission:

1. Archbald Power Corporation

[Docket No. QF85-292-004]

On October 9, 1990, Archbald Power Corporation (Applicant) of 100 Australian Avenue, Suite 304, West Palm Beach, Florida 33406, submitted for filing a Petition for Temporary Waiver of Operating Standard and Request For Expedited Consideration. Specifically, Applicant requests waiver of the Commission's operating standard for the period beginning September 11, 1990, through December 31, 1990, with respect to its 20.2 MW topping-cycle cogeneration facility located in Archbald Borough, Pennsylvania.

The original certification was issued on April 24, 1985. A recertification was issued on September 8, 1986. Applicant filed notices of qualifying status on December 29, 1986, and April 9, 1990.

Comment date: November 5, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket No. EL91-13-000]

Take notice that on October 4, 1990, New England Power Company (NEP) tendered for filing an amendment of service agreement between NEP and New Hampshire Electric Cooperative.

Comment date: October 29, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Central Virginia Electric Cooperative, Inc. and Craig-Botetourt Electric Cooperative, Inc. v. Virginia Electric and Power Company

[Docket No. EL90-52-000]

Take notice that on September 21, 1990 Central Virginia Electric Cooperative, Inc. (Central Virginia) and Craig-Boteourt Electric Cooperative, Inc. (Craig) (collectively, Cooperatives) tendered for filing a complaint against Virginia Electric and Power Company (VEPCO). Cooperatives state that the rates currently charged Cooperatives by VEPCO are excessive, unjust, unreasonably and unduly discriminatory. Cooperatives further state that the increased rates proposed by VEPCO in Docket No. ER90-540-000 are excessive, unjust, unreasonable and unduly discriminatory and therefore unlawful under the Federal Power Act.

In their complaint Cooperatives request that the Commission consolidate this docket with Docket Nos. EL90-49-000, EL90-51-000, and ER90-540-000.

Comment date: November 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25076 Filed 10-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-112-000, et al.]

Transwestern Pipeline Co., et al.; Natural Gas Certificate Filings

October 16, 1990.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Co.

[Docket No. CP91-112-000]

Take notice that on October 11, 1990, Transwestern Piepline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-112-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Enron Gas Marketing, Inc. (Enron), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transwestern proposes to transport on an interruptible basis up to 200,000 MMBtu of natural gas equivalent per day on behalf of Enron pursuant to a transportation agreement dated September 11, 1990, between Transwestern and Enron. Transwestern would receive the gas at existing delivery points in Arizona, Oklahoma, Texas and New Mexico and redeliver equivalent volumes at existing delivery points in Arizona, Texas, Oklahoma and New Mexico.

Transwestern states that the estimated average daily and annual quantities would be 150,000 MMBtu and 73,000,000 MMBtu, respectively. Service under § 284.223(a) commenced on September 11, 1990, as reported in Docket No. ST91–57–000, it is stated.

Comment date: November 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP91–114–000]

Take notice that on October 11, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docekt No. CP91–114–000 an application pursuant to section 7(b) of the Natural Gas Act for permission for and approval to abandon, by removal, the Gray County #1 compressor station and all appurtenant facilities, including miscellaneous valves and piping, located in Gray County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that the Gray County #1 compressor station (Gray #1) was constructed to maintain the Panhandle-White Deer gas supply system and was placed into service on October 18, 1980. It is stated that the Gray #1 is a single stage compression facility and consists of one 228 horsepower single stage unit and one 111 horsepower single stage unit. It is submitted that currently, 15 wells flow gas at an average throughput of approximately 1,000 Mcf per day to the suction side of the Gray #1. It is stated that the gas is then discharged into the suction side of the McConnell compressor station, which is a two stage compression facility and consists of two 736 horsepower units and one 810 horsepower unit.

Northern submits that the Gray #1 has not been utilized for several years because compression has not been needed at this location to maintain deliveries of system supply to Northern's customers because of a decline in deliverabilities due to the plugging and abandoning of numerous wells. It is stated that compression located at the McConnell compressor station currently provides all of the required compression since there is sufficient line and compression capability at the McConnell compressor station to handle both McConnell's and Gray's gas. Therefore, Northern explains, the proposed abandonment of the Gray #1 will not result in the abandonment of any service to any of Northern's existing customers or producers, nor will the proposed abandonment adversely affect Northern's ability to receive gas since compression at the Gray #1 is no longer needed. Northern further states that approval of the abandonment will improve the efficiency of Northern's overall system operations by making the Gray #1 compression, unnecessary at its present location, available for possible future use elsewhere.

Comment date: November 6, 1990, in accordance with Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP91–120–000]

Take notice that on October 11, 1990, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP91–120–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Municipal Gas Authority of Georgia (MGAG), under Southern's blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day for MGAG from receipt points located in Offshore Texas, Offshore Louisiana, Texas, Louisiana, Mississippi and Alabama to various points of delivery located in Georgia. Southern anticipates transporting 7,500 MMBtu of natural gas on an average day and an annual volume of 2,737,500 MMBtu.

Southern states that the transportation of natural gas for MGAG commenced August 23, 1990, as reported in Docket No. ST90–4599–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Southern in Docket No. CP88–316–000.

Comment date: November 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP83–140–007]

Take notice that on October 1, 1990, K N Energy, Inc. (K N), 12055 West Second Place, Lakewood, Colorado 80215, filed in Docket No. CP83–140–007 a petition pursuant to section 7 of the Natural Gas Act to amend the Commission order issued in Docket Nos. CP83–140–000 and CP83–140–001, as amended, in order to construct and operate sales taps to make direct retail sales to customers located on or near K N's transmission facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N requests that the Commission issue an order amending K N's blanket certificate issued in Docket Nos. CP83–140–000 and CP83–140–001, as amended, granting K N permission to use the automatic authorization procedure set forth in § 157.211(a)(1) of the Commission's Regulations to construct and operate sales taps in order to make direct retail sales to customers located on or near its transmission facilities, or to issue an order approving such proposal. As an alternative, K N requests that the Commission issue an order reinstituting the historical automatic sales tap authority on a broad basis to those pipelines that would qualify.

K N states that on March 16, 1983, in Docket Nos. CP83–140–000 and CP83–140–001, the Commission granted K N a blanket certificate of public convenience and necessity pursuant to subpart F of part 157 of the Regulations, authorizing K N to perform certain routine activities on a self-implementing basis, subject to the notice procedure as set forth in § 157.205.

It is stated that on June 18, 1984, K N petitioned for an amended blanket certificate authorizing K N to utilize the prior notice procedure pursuant to § 157.205 for § 157.211(b) construction and operation of on-system sale taps for new or existing direct retail customers. K N states that in that petition it stated that the added costs, delays and uncertainties involved in obtaining a section 7(c) certificate were a deterrent to potential customers and an impediment to K N's ability to provide service. It is indicated that on November 23, 1984, the Commission granted K N the blanket authority it had requested in Docket No. CP83–140–002 and that to date, K N has filed such requests for

blanket authorization to install approximately 414 sales taps.

K N states that on October 26, 1986, it filed a petition to amend its blanket certificate in order to permit K N to use the automatic authorization procedure of § 157.211(a)(1) of the Regulations to construct and operate sales taps to make direct retail sales to 200 MMBtu or less of natural gas per day to customers who are at or near its transmission facilities but who are not right-of-way grantors. It is indicated that such petition was denied by the Commission order dated September 17, 1987, and that rehearing was denied by the Commission order dated March 24, 1989.

K N states that by this subject petition it is renewing its request that the Commission amend the blanket certificate issued to K N in Docket Nos. CP83–140–000 and CP83–140–001, as amended, to permit K N to use the automatic authorization procedure set forth in § 157.211(a)(1) of the Regulations in order to construct and operate sales taps for the ultimate delivery of up to 200 MMBtu of natural gas per day to residential, small commercial, agricultural, and small industrial end users located on or near K N's transmission facilities. K N states that it is limiting its request in that the proposed automatic authority would not be used to service customers within another local distributor's franchise area. K N points out that it is unique in that it makes most of its gas sales at retail as a local distributor subject to state and local regulation. K N further indicates that, unlike most other interstate pipelines, many of its jurisdictional transmission pipelines are used to serve rural customers for domestic and agricultural purposes. Finally, K N states that it has a retail service obligation under state law.

K N specifically states that it is not seeking automatic authorization to add additional wholesale delivery points to new or existing sales-for-resale customers or to add sales taps for large volume customers.

Comment date: November 6, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corp.

[Docket No. CP91–10–000, Docket No. CP91–11–000]

Take notice that on October 1, 1990, Texas Gas Transmission Corporation, Post Office Box 2521, Houston, Texas 77252–2521, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88–136–007, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: November 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day avg, annual [1]	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91–10–000 (10–1–91)	Texas Eastern Transmission Company.	Amerada Hess Corporation.	100,000 100,000 36,500,000	Offshore LA, LA, AL, AR, IL, IN, KY, MO, NJ, MS, NY, OH, PA, TN, TX, WV.	Offshore TX & LA, TX, LA.	8–1–90, IT–1	CP88–136–007, ST90–4562–000.
CP91–11–000 (10–1–91)	Texas Eastern Transmission Company.	Delta Pipeline Company.	2,511 2,511 916,515	Offshore LA, LA, AL, AR, IL, IN, KY, MO, MS, NJ, NY, OH, PA, TN, TX, WV.	Offshore TX & LA	8–1–90, IT–1	CP88–136–007, ST90–4661–000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Questar Pipeline Co.

[Docket No. CP90–2265–000]

Take notice that on September 21, 1990, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed an application, as supplemented October 5, 1990, with the Commission pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to retroactively abandon a firm natural gas sale which was converted to a firm natural gas transportation service for Mountain Fuel Supply Company (Mountain Fuel), all as more fully set forth in the application which is open to public inspection.

Questar proposes to abandon, effective November 1, 1989, a daily firm natural gas sale of 53,850 dekatherms under its FERC Rate Schedule CD–1 to Mountain Fuel. Questar states that it converted this sale to a daily firm transportation service of 53,850 dekatherms under its FERC Rate Schedule T–1 for Mountain Fuel on November 1, 1989, as reported in its initial report filed in Docket No. ST90–3746.

Comment date: November 6, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural

Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25067 Filed 10-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-63-003]

Carnegie Natural Gas Co.; Compliance Filing

October 17, 1990.

Take notice that on October 12, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Third Substitute Ninth Revised Sheet No. 8
Third Substitute Ninth Revised Sheet No. 9
First Revised Sheet No. 114
Original Sheet No. 114a
First Revised Sheet No. 115
Original Sheet No. 115a

Carnegie states that these revised tariff sheets, which among other things revises sections of its purchased gas adjustment ("PGA") clause, are being filed in compliance with a Commission order issued on September 13, 1990, in Docket Nos. TA90-1-63-000, TA90-1-63-001, and TA90-1-63-002. Pursuant to this order, the Commission required Carnegie to recompute its surcharge rate included in Carnegie's annual PGA filed on June 19, 1990, in Docket No. TA90-1-63-000, with an effective date of September 1, 1990. The September 13th Commission order required changes in certain tariff language to specify the method used by Carnegie to compute its current adjustment for Rate Schedule LVIS and to comply with § 154.305(b)(2) of the Commission's regulations. The Commission also required Carnegie to provide additional information supporting its filing. Carnegie states that its filing complies with the Commission's order in these dockets. In support of its filing, Carnegie attached revised tariff sheets, schedules, working papers, and other information.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before October 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25069 Filed 10-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1417-001; Project No. 1835-013]

Central Nebraska Public Power and Irrigation District; Nebraska Public Power District; Extend Comment Date

October 5, 1990.

On August 20, 1990, the Federal Energy Regulatory Commission (FERC) issued notices of application for Projects No. 1835 and 1417 that established October 5, 1990, as the notice comment due date for each. (55 FR 35937, September 4, 1990).

Numerous parties have requested to extend the notice comment dates of the above-mentioned projects. Therefore, we are extending the comment period to November 20, 1990, as to coincide with receipt of the environmental impact statement scoping comments.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25075 Filed 10-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 17, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on October 15, 1990, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, *et al.*, and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed six (6) copies of the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Proposed To Be Effective September 1, 1990

Second Substitute First Revised Sheet No. 211
Substitute First Revised Sheet No. 212

Proposed To Be Effective October 1, 1990

First Revised Sheet No. 41
First Revised Sheet No. 45
Second Revised Sheet No. 46
First Revised Sheet No. 49
Second Revised Sheet No. 52
First Revised Sheet No. 203
First Revised Sheet No. 205
First Revised Sheet No. 206
First Revised Sheet No. 207
First Revised Sheet No. 208
Second Revised Sheet No. 209
Third Revised Sheet No. 210
Second Revised Sheet No. 211
Second Revised Sheet No. 212
Original Sheet No. 212A

Proposed To Be Effective November 1, 1990

Third Revised Original Sheet No. 32
Second Revised Sheet No. 49

The purpose of the filing is to flow through changes in take-or-pay costs allocated to CNG by its pipeline suppliers. Also, CNG is proposing to revise tariff language to permit it to recover past take-or-pay amounts that are billed from Tennessee Gas Pipeline Company to CNG that are directly assignable to Corning National Gas Corporation. CNG is also proposing a voluntary reduction in its fuel retention and fuel charges under Rate Schedules TF and TI.

CNG states that copies of this filing were served upon CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should be file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should filed on or before October 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25068 Filed 10-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4579-064, et al.[1]]

Mobil Exploration and Producing North America, Inc., et al.; Order on Remand and Filing Requirements For Successors-In-Interest

Issued October 17, 1990.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

In *Mobil Exploration and Producing North America, Inc.* v. *FERC*,[2] (Mobil) the United States Court of Appeals for the Fifth Circuit affirmed in part and vacated in part the Commission's order in *George R. Brown Partnership*, (George R. Brown) [3] which had applied the Commission's new policy on successor certificates that the Commission announced in February 1986 in Tenneco Oil Co. (Tenneco).[4] In George R. Brown, the Commission reviewed appeals of orders issued by the Director of the Office of Pipeline and Producer Regulation (Director) [5] that had been filed by various producers who had acquired leasehold interests in gas producing property, and requested successor certificates. The orders issued by the Director granted the certificates but limited the rates to the predecessors' rates in effect on the date of transfer of the properties and required the producers to refund any amounts in excess of the predecessor's rates collected between the time of acquisition of the leasehold interest and the time of filing for a successor certificate because the producers had failed to meet the one-year limit imposed in Tenneco.

Prior to 1986, the Commission's policy was to issue certificates to successors and to permit the successors to collect all periodic and monthly escalations from the time of acquisition to the time they filed for the successor certificate, regardless of when the application was made. In Tenneco, the Commission changed its policy and imposed a one-year time limit for making the successor filing, and stated that if the successor filing was not timely, the successor would be limited to the rate in effect when the property was acquired. However, Tenneco stated that the new policy would be prospective and would not apply to successor applications already on file.[6]

Several months after Tenneco, petitioners in Mobil [7] filed their applications for successor certificates for interests acquired by them more than one year prior to the filings. Applying the Tenneco rule, the Director issued the certificates but required the applicants to refund amounts in excess of the predecessors' rates collected between the time each acquired the property and the time each filed for a successor certificate. On review, in George R. Brown, the Commission waived the Tenneco one-year filing requirement for a period of ninety (90) days following the February 5, 1986 issuance of Tenneco.[8] However, since the filings by petitioners were made more than one year after the effective date of the property transfer, and were not made within the 90-day waiver period, the Commission upheld the Director's orders directing petitioners to make refunds.[9]

In Mobil, the court affirmed the portions of the Commission's orders that required successors in interest to file for a certificate within one year of the effective date of the transfer, or within the 90-day waiver period following the Tenneco order. The court also upheld the Commission's decision to announce the change in policy in an adjudication rather than in a rulemaking. However, the court stated that where the Commission changes its policy and announces a new principle, and it does so by adjudication, the Commission must provide notice of the new policy "which is reasonably calculated to inform all those whose legally protected interests may be affected by the new principle."[10] The Tenneco order was not published in the **Federal Register**, was one of 75 orders on a consent agenda and passed with no discussion at the Commission meeting, no request for rehearing was filed because the new policy announced therein was inapplicable to the producer in Tenneco, and there was nothing in the heading or the ordering paragraphs to signal a change in policy. Under these circumstances, the court found that the Commission "failed to provide actual or constructive notice reasonably calculated to inform petitioners of the one-year time limit." [11] Accordingly, the court vacated the portions of the order requiring refunds as to petitioners who did not have actual or constructive notice of the one year time limit to file. This order implements the court's decision.

The portions of the George R. Brown order thar require petitioners to refund any rates in excess of the predecessors' rates collected until the time of filing are vacated. In addition, this order shall be published in the **Federal Register** to provide all affected parties with notice to Tenneco policy.

In order to allow sufficient time for compliance, the Commissioin will waive the Tenneco policy for a period of 90 days following publication of this order in the **Federal Register.**

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[1] See attached Appendix.

[2] 881 F.2d 193 (5th Cir. 1989).

[3] 44 FERC ¶ 61,100 (1988), *reh'g denied, sub nom.* Mobil Exploration and Producing North America, Inc. *et al.*, 44 FERC ¶ 61,351 (1988).

[4] 34 FERC ¶ 61,143 (1986).

[5] The orders were issued on July 7, 1987, August 10, 1987, September 3, 1987, September 25, 1987, and September 29, 1987.

[6] Since the Commission allowed the applicant in Tenneco to retain all rate increases, no rehearing was filed.

[7] Petitioners were Mobil Exploration and Producing North America, Inc., Texaco Inc. and Texas Producing Inc., and OXY USA Inc. (formerly Cities Service Oil and Gas Corporation). Other producers directed to make refunds in George R. Brown were not parties to the appeal.

[8] The Commission explained that the 90-day waiver period was to provide 30 days for rehearing of Tenneco, 30 days for Commission action on the request, and 30 days for successors to prepare and make the filing with the Commission.

[9] The Commission's order granted the appeals of producers whose filings were within the 90-day waiver period or who had demonstrated good cause for a waiver of the refund.

[10] 881 F.2d at 199.

[11] *Id.* at 200.

In light of the Court's finding concerning the notice issue, we believe that other successors who were required to make refunds because of untimely filings may not have had adequate notice and sufficient time to comply. Accordingly, we will also vacate the refund condition imposed in successor certificates listed in the Appendix.

The Commission Orders

(A) The portions of the *George R. Brown* order that require petitioners to refund any rate in excess of the predecessors' rates collected from the date of transfer until the successor filing are vacated.

(B) The portions of any certificated of public convenience and necessity listed on the Appendix that imposed a refund obligation based upon the failure to timely file in accordance with the Tenneco rule are vacated.[12]

(C) The Secretary shall cause this order to be published in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Secretary.

[12] The petition filed by Pennzoil Product Co. in Docket NO. CI61-945-002, a docket on the appendix, to reopen the proceeding and vacate the refund obligation, is dismissed as moot.

APPENDIX

Order date	Docket No.	Successors subject to refund conditions
7-7-87	G-4579-040 [1]	Cities Service Oil and Gas Corporation.
	G-8751	The George R. Brown Partnership.
	G-12015-000	The George R. Brown Partnership.
	CI60-580	The George R. Brown Partnership.
	CI64-1392-002	BHP Petroleum Company Inc.
	CI77-735-003	Odeco Oil & Gas Company.
	CI85-32-001	Mobil Exploration and Producing. North America Inc.
	CI86-256-000	Amoco Production Company.
	CI86-386-000	Amoco Production Company.
	CI86-506-000	Phillips Petroleum Company.
	CI86-613-000	BHP Petroleum (Americas) Inc.
	CI87-186-000	TXO Production Corp.
	CI87-234-000	Chevron U.S.A. Inc.
	CI87-235-000	Chevron U.S.A. Inc.
	CI87-312-000	CNG Producing Company.
	CI87-313-000	Texaco Inc.
	CI87-333-000	Texaco Producing Inc.
	CI87-351-000	Texaco Producing Inc.
	CI87-377-000	Amoco Production Company.
	CI87-393-000	Cabot Petroleum Corporation.
[2] 8-10-87	CI86-695-000	Amoco Production Company.
	CI86-726-000	Amoco Production Company.
	CI87-571-000	Texaco Producing Inc.
	CI87-575-000	Texaco Producing Inc.
	CI87-576-000	Texaco Producing Inc.
	CI87-647-000	Exxon Corporation.
[3] 8-10-87	CI66-769-000	Amoco Production Company.
	CI87-193-000	Koch Exploration Company.
8-18-87	CI87-32-000 [1] through CI87-44-000	ONEOK Exploration, Inc.
9-3-87	CI63-1045-000 [1]	Samson Resources Company.
	CI87-775-000	Cities Services Oil and Gas Corporation.
9-24-87	CI87-274-000 [1] through CI87-286-000	Anadarko Petroleum Corporation.
9-25-87	G-5044 [1]	Samson Resources Company.
	CI66-426	Samson Resources Company.
[4] 9-29-87	CI87-885-000	Cities Service Oil and Gas Corporation.
	CI87-886-000	Cities Service Oil and Gas Corporation.
8-5-88	CI88-197-000 [1]	Tenneco Oil Company.
	CI88-263-000	Amoco Production Company.
	CI88-312-000	Mobil Oil Exploration & Producing Southeast Inc.
8-26-88	G-4579-049 [1]	Cities Service Oil and Gas Corporation.
	CI65-749	Amoco Production Company.
	CI88-361-000	Tenneco Oil Company.
	CI88-483-000	Cabot Petroleum Corporation.
9-21-88	CI88-50-000 [1]	Anadarko Petroleum Corporation.
9-21-88	CI88-230-000 [1]	Mobil Producing Texas & New Mexico Inc.
10-26-88	CI86-452-000 [1] through CI86-499-000	Marathon Oil Company.
10-31-89	G-4579-050 [1]	OXY USA Inc. (formerly Cities Service Oil and Gas Corporation).
	G-8123-000	Shell Western E&P Inc.
11-3-88	CI61-945-000, *et al.* [1]	Pennzoil Products Company.
[5] 11-3-88	CI84-295-000	Mesa Operating Limited Partnership.
	CI84-323-001	Mesa Operating Limited Partnership.
11-22-88	CI88-639-000 [1]	Amoco Production Company.
[6] 12-19-88	CI88-430-000	Amoco Production Company.
	CI88-502-000	Terra Resources, Inc.
[7] 2-17-89	CI89-67-000	Amoco Production Company.
	CI89-68-000	Amoco Production Company.
	CI89-69-000	Amoco Production Company.
[8] 2-28-89	CI89-35-000	Mesa Operating Limited Partnership.
[9] 3-28-89	CI84-283	Mesa Operating Limited Partnership.
	CI89-197-000	Helmerich & Payne, Inc.
5-26-89	CI61-1791-000 [1]	Mitchell Energy Corporation.
	CI89-153-000	Amoco Production Company.

APPENDIX—Continued

Order date	Docket No.	Successors subject to refund conditions
[10] 5-26-89	CI89-203-000	Samedan Oil Corporation.
	CI89-287-000	Amoco Production Company.
	CI89-288-000	Amoco Production Company.
	CI89-289-000	Amoco Production Company.
	CI89-290-000	Amoco Production Company.
	CI89-291-000	Amoco Production Company.
	CI89-292-000	Amoco Production Company.
	CI89-293-000	Amoco Production Company.
	CI89-298-000	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.
[11] 8-22-89	CI89-436-000	Exxon Corporation.

[1] Lead docket number.
[2] Lead Docket No. G-2758-000, *et al.*
[3] Lead Docket No. G-15153-001, *et al.*
[4] Lead Docket No. G-3244-000, *et al.*
[5] Lead Docket No. CI81-65-000, *et al.*
[6] Lead Docket No. G-5889, *et al.*
[7] Lead Docket No. G-4579-058, *et al.*
[8] Lead Docket No. G-3810-000, *et al.*
[9] Lead Docket No. G-4579-061, *et al.*
[10] Lead Docket No. CI64-26-030, *et al.*
[11] Lead Docket No. CI89-425-000, *et al.*

[FR Doc. 90-25073 Filed 10-23-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP91-8-000]

National Fuel Gas Supply Corp.; Limited Purpose Rate Change Filing

October 17, 1990.

Take notice that on October 15, 1990, National Fuel Gas Supply Corporation (National), pursuant to Section 4 of the Natural Gas Act and in compliance with the Niagara Import Point Projects Phase III certificate order, 52 FERC ¶61,257, issued on September 13, 1990 in CP88-194-001 et al, submitted a limited purpose rate change.

National states the purpose of this filing is to change the firm transportation rates for specific shippers in Phase I and Phase II to match the rates approved for Phase III. This limited purpose rate change filing was authorized by the Commission in the Niagara Import Point Project Phase III certificate order.

Phase I service is National's firm transportation of gas into and out of storage, between Ellisburg and Leidy, Pennsylvania, associated with Transco's SS-2 storage service, certificated on July 27, 1989. National Fuel Gas Supply Corporation, et al., 48 FERC ¶61,121 (1989). Phase II service is National's firm transportation for the TEMCO/ESSO project between the Niagara import point and Wharton, Pennsylvania, certificated on May 2, 1990. National Fuel Gas Supply Corporation, et al., 51 FERC ¶61,113 (1990).

National states that this limited purpose rate change will have no impact on any of National's other existing customers. These rates are based only on the costs of the incremental facilities to be built to provide the Phase I, II, and III transportation services.

National proposes to charge the following rates for all its Niagara transportation services, regardless of Phase, for each zone:

	Demand	Commodity
Zone I	$1.2889 per Mcf	$0.0480 per Mcf
Zone II	$0.6524 per Mcf	$0.0243 per Mcf
Zone III	$0.9310 per Mcf	$0.0409 per Mcf
Total	$2.8723 per Mcf	$0.1132 per Mcf

The following revised tariff sheets have been filed, as part of Volume 2 of National's FERC Gas Tariff, to reflect these proposed rates:

Phase I

Special Rate Schedule X-54
First Revised Sheet No. 796

Phase II

Special Rate Schedule X-57
Second Revised Sheet No. 857
First Revised Sheet No. 869

National requests that: (1) The notice of this limited purpose rate filing be published immediately, with a shortened comment period of no more than seven days; (2) the proposed rates for National's Niagara Import Point Project Phase I and Phase II shippers not be suspended and made subject to refund; and (3) these rates be put into effect immediately thereafter, and in no case later than November 1, 1990.

National has appended to this filing two exhibits to support the rate changes.

Exhibit 1 is a copy of the Staff's actual workpapers used to compute the approved rates in the Phase III order for National. The Staff has these workpapers included in the formal record for the Niagara Import Point Projects on October 2, 1990.

Exhibit 2 is National's own worksheets for deriving costs-of-service and setting the rates for all three zones. National states that it replicated Staff's worksheets, adjusted only to correct obvious computing errors. These errors are described in the filing, and relate to Zone I billing determinants, Zone III billing determinants, accumulated deferred income taxes, and equity component of AFUDC.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25074 Filed 10-23-90; 8:45 am]
BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. TA90-1-37-005]

Northwest Pipeline Corp.; Refund Report

October 17, 1990.

Take notice that on September 28, 1990, Northwest Pipeline Corporation (Northwest) tendered for filing a refund report that reflects refunds made under tariff sheets accepted by the Commission in compliance with the Commission order that was issued on March 29, 1990 in Docket No. TA90-1-37-000.

Northwest notes that a copy of this refund report is being served on all jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before October 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25070 Filed 10-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-9-001; TM91-1-9-001]

Tennessee Gas Pipeline Co.; Tariff Filing

October 17, 1990.

Take notice that on October 15, 1990, Tennessee Gas Pipeline Company (Tennessee) tendered for filing, in compliance with the Commission's September 27, 1990 Letter Order (Letter Order) in the captioned proceedings, the following tariff sheets to be effective October 1, 1990:

Second Revised Volume No. 1

Substitute Twentieth Revised Sheet No. 20
Substitute Eighteenth Revised Sheet No. 20A
Substitute Eleventh Revised Sheet No. 22
Substitute Sixth Revised Sheet No. 22A
Substitute Tenth Revised Sheet No. 23
Substitute Tenth Revised Sheet No. 24

Original Volume No. 2

Substitute Tenth Revised Sheet No. 10

Tennessee also tendered for filing Substitute Eleventh Revised Sheet No. 10 to Original Volume No. 2, to become effective November 1, 1990.

The purpose of this filing is to revise the Annual Charge Adjustment (ACA) to reflect the revision in the ACA rate established in the Commission's order in Docket Nos. RM87-3-000, TM91-1-20-000, *et al.*, and in the Commission's Letter Order. Tennessee filed Substitute Eleventh Revised Sheet No. 10, to be effective November 1, 1990, to replace Eleventh Revised Sheet No. 10, which reflected the old ACA rate and was filed on October 1, 1990 in Tennessee Gas Pipeline Company, Docket No. CP87-132.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before October 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25071 Filed 10-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-29-000]

Transcontinental Gas Pipe Corp.; Proposed Changes in FERC Gas Tariff

October 17, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on October 15, 1990, certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff included in Appendix A attached to the filing.

Transco states that the purpose of the filing is to track rate changes attributable to (1) storage services purchased from Consolidated Natural Gas (CNG) under its Rate Schedule GSS and transportation services purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X-42 the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (2) storage services purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S-2, (3) transportation services purchased from National Fuel under its Rate Schedule X-54 the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS-2, and (4) transportation services purchased from North Penn Gas Company (North Penn) under its rate Schedule SS the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS-1. The tracking filing is being made pursuant to Section 4 of Transco's Rate Schedule LSS Section 4 of Transco's Rate Schedule SS-2, Section 5 of Transco's Rate Schedule SS-1, and Section 26 of the General Terms and Conditions of Volume No. 1 of its FERC Gas Tariff.

Included in Appendices B through H attached to the filing are explanations of each of the tracking rate changes, the proposed effective date of such changes and details regarding the computation of the revised LSS, S-2, SS-2, and SS-1 rates.

Also included therein for filing are revised tariff sheets which incorporate the Rate Schedule LSS, S-2, SS-2, and SS-1 rate changes proposed therein into subsequent intervening rate filings which have been accepted or are currently pending Commission acceptance on the effective dates reflected thereon.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25072 Filed 10-23-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-56-NG]

V.H.C. Gas Systems, L.P.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting blanket authorization to import and to export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting V.H.C. Gas Systems, L.P. (V.H.C. Gas Systems) blanket authorization to import up to 150 Bcf and to export up to 150 Bcf of natural gas, including liquefied natural gas, over a two-year period beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 15, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-25154 Filed 10-23-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of $788,586.45, plus accrued interest, obtained by the DOE under the terms of five consent orders. The DOE received $101,000 pursuant to a consent order with Benton Pruet d/b/a P & R Trading Company and a total of $687,586.45 pursuant to four separate consent orders with Trigon Exploration Company, Inc., *et al.* The four Trigon Exploration Company, Inc. (Trigon) consent orders are with Trigon and C. William Rogers, Trigon and Omni Drilling Partnership No. 1978-2, Trigon and D. Bryan Ferguson, and Trigon and Entex, Inc. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Comments must be filed in duplicate on or before November 23, 1990, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to case numbers LEF-0018 & LEF-0019.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute $788,586.45 that has been remitted to the DOE pursuant to the terms of five consent orders. The DOE received $101,000 pursuant to a consent order with Benton Pruet d/b/a P & R Trading Company. The DOE also received $687,586.45 pursuant to four separate Trigon Exploration Company, Inc. (Trigon) consent orders with Trigon and C. William Rogers, Trigon and Omni Drilling Partnership No. 1978-2, Trigon and D. Bryan Ferguson, and Trigon and Entex, Inc. The DOE is currently holding the funds in an interest bearing account pending distribution.

The DOE has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be in proportion of each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. through 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: October 18, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Names of Firms: Benton Pruet d/b/a P&R Trading Company Trigon Exploration Company, Inc., *et al.*

Dates of Filing: July 7, 1990, July 17, 1990.

Case Numbers: LEF-0018, LEF-0019.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider two Petitions for the Implementation of Special Refund Procedures filed by the ERA for crude oil overcharge funds. The first petition deals with Benton Pruet d/b/a P&R Trading Company (Pruet) (Case No. LEF-0018). This Office issued a Remedial Order against Pruet for violations of the crude oil resale regulations during the period from September 1979 through November 1980. *P&R Trading Company*, 13 DOE ¶ 83,023 (1985). Pruet subsequently appealed to the Federal Energy Regulatory Commission. Pruet and the DOE then entered into a consent order (No. 6A0X00335) under which Pruet remitted $101,000 in settlement of the DOE's claims.[1]

[1] The Remedial Order found that Pruet committed violations of the regulations concerning the resale of crude oil during the period from September 1979 through November 1980. The consent order settles Pruet's liability with regard to any potential violation of the federal petroleum and price regulations during the period from September 1, 1979 through January 27, 1981. Consent Order at ¶

Continued

The second petition deals with Trigon Exploration Company, Inc. (Trigon), *et al.*, a producer of crude oil (Case No. LEF–0019). On August 30, 1985 the ERA issued a Proposed Remedial Order to Trigon alleging violations of the regulations regarding the sale of crude oil during the period June 1979 through December 1980. The DOE has subsequently entered into four consent orders with Trigon and four working interest owners who have remitted a total amount of $687,586.45 in settlement of any potential violations arising out of the sale of crude oil from June 1979 through January 21, 1981 (all four consent orders are subsumed under one consent order number: 650C00374). 52 FR 27574 (July 22, 1987). These consent orders are with Trigon and C. William Rogers, Trigon and Omni Drilling Partnership No. 1978–2, Trigon and D. Bryan Ferguson, Trigon and Entex, Inc. (hereinafter collectively referred to as Trigon, *et al.*).

In sum, Pruet and Trigon, *et al.*, remitted $788,586.45 to the DOE. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from Pruet and Trigon, *et al.*, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in In re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378 (D. Kan. 1986) (the Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the Subpart V regulations. 52 FR 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, i.e., New York Petroleum, Inc., 18 DOE ¶ 85,435 (1988) (*NYP*); Shell Oil Co., 17 DOE ¶ 85,204 (1988) (Shell); Ernest A. Allerkamp, 17 DOE ¶ 85,079 (1988) (Allerkamp), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals (TECA). In the case In re: The Department of Energy Stripper Well Exemption Litigation, various states filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In re: The Department of Energy Stripper Well Exemption Litigation, 671 F. Supp. 1318 (D. Kan. 1987), aff'd 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24.

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April Notice to the crude oil subpart V proceeding that is the subject of the present determination. As noted above, an alleged crude oil violation amount of $788,586.45, plus interest, is covered by this proposed Decision. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $157,717.29, plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g.*, Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel). As in non-crude oil cases, applicants will be required to document their purchase volumes and prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *E.g.*, A. Tarricone, Inc., 15 DOE ¶ 85,495 at 88,893–96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *E.g.*, Berry Holding Co., 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *E.g.*, NYP, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Mid-America Dairyman, Inc.* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989); *accord*, Boise Cascade Corp., 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($788,586.45) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.00000039 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *E.g.*, Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That previously filed application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. A deadline of June 30, 1988 was established for the first pool of crude oil funds. The first pool was funded by crude oil refund proceedings, implemented pursuant to the MSRP, up to and including Shell. A deadline of October 31, 1989 was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil proceedings beginning with World Oil Co., 17 DOE ¶ 85,568, corrected, 17 DOE ¶ 85,669 (1988), and ending with Texaco Inc., 19 DOE ¶ 85,200, corrected, 19 DOE ¶ 85,236 (1989). The

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101 & 501. The OHA has contacted Pruet's attorney and has determined that Pruet never engaged in any refined product related activities. *See* Record of Telephone Conversation between Raymond P. Rayner, Jr., OHA Attorney Advisor, and William F. Cockrell, Jr., Attorney for Pruet (September 21, 1990). Accordingly, the OHA believes that the entire settlement was for potential crude oil violations.

deadline for filing an application for refund from the third pool of funds was established as March 31, 1991 by Bi-Petro, Inc., 20 DOE ¶ 85,071 (1990). The volumetric refund amount for the third pool of funds will be increased as additional crude oil violation amounts are received in the future. Notice of any additional amounts available in the future will be published in the Federal Register.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that eighty percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $630,869.16, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Benton Pruet d/b/a P & R Trading Co. and Trigon Exploration Company, Inc., *et al.*, will be distributed in accordance with the foregoing Decision.

[FR Doc. 90-25156 Filed 10-23-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3954-5]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Hazardous Waste Industry Studies (EPA ICR # 0818.04; OMB # 2050-0042). This is a renewal of a currently approved collection.

Abstract: EPA proposes to conduct surveys of, and site visits to, facilities in various industries to collect hazardous waste information on industrial process residuals, their quantities, characteristics, and how they are managed. The information will be used to expand and refine the list of RCRA hazardous wastes requiring management controls in the industries studied.

Burden statement: The estimated average public reporting and recordkeeping burden for this collection of information is about 27 hours per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering data, and preparing and submitting the instrument to the Agency.

Respondents: Industries that generate or manage hazardous waste. The specific fifteen industries projected for study are: Dioxin Producing Industries, Carbamate Pesticides, Organobromines, Solvents, Petroleum Refining, Chlorinated Aromatics, Dyes and Pigments, Coke and By-products, Paint Production, Wood Preserving, Used Oil Recycling, Pharmaceuticals, Pulp and Paper, Plastics and Resins, and Industrial Organics.

Estimated number of respondents: 1377.

Estimated total annual burden of respondents: 44,147 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 0002.05; Final Rule to Implement the Recommendations of the Domestic Sewage Study; was approved 8/20/90; OMB # 2040-0150; expires 8/31/93.

EPA ICR # 0270.18; Phase V Drinking Water Regulations; was approved 9/24/90; OMB # 2040-0090; expires 9/30/90.

EPA ICR # 1390.01; State Revolving Fund Report to Congress Questionnaire; expiration date was extended to 1/31/91.

Dated: October 17, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-25134 Filed 10-23-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3854-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected cost and burden; where appropriate, they include the actual data collection instruments.

DATE: Comments must be submitted on or before November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Grain Elevators—Information Requirements. (Subpart DD) (ICR #1130.03; OMB #2060-0082). This is a renewal of a previously approved collection.

Abstract: Owners or operators of grain storage elevators, must notify EPA of construction, reconstructions, modifications, shutdowns, date of anticipated and actual start-ups, and date and results of all performance tests. They must also maintain records of all performance test results, as well as the occurrence and duration of any start-up or malfunction. The States and/or EPA use these data to determine compliance with the standards, to target inspections, and, when necessary, to use as evidence in court.

Burden statement: The annual public burden for this collection of information is estimated to average approximately 43 hours per response for reporting, and 3 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed, and review the collection of information.

Respondents: Owners and operators of grain elevators.

Estimated no. of respondents: 1 respondent will report and 20 respondents will keep records.

Estimated no. of responses per respondent: 2.

Estimated total annual burden on respondents: 145 hours.

Frequency of collection: Once and on occasion.

Title: NSPS for Hot Mix Asphalt Facilities—Information Requirements. (Subpart I) (ICR #1127.03; OMB #2060–0083). This is a renewal of a previously approved collection.

Abstract: Owners or operators of hot mix asphalt facilities must notify EPA of construction, reconstructions, modifications, shutdowns, date of anticipated and actual start-ups, and date and results of all performance tests. They must also maintain records of all performance test results, as well as the occurrence and duration of any start-up or malfunction. The States and/or EPA use these data to determine compliance with the standards, to target inspections, and, when necessary, to use as evidence in court.

Burden statement: The public annual burden for this collection of information is estimated to average approximately 43 hours per response for reporting, and 1.5 hours per recordkeeper. This estimate includes the time needed to review instructions, search for existing data sources, gather the data needed, and review the collection of information.

Respondents: Owners and operators of hot mix asphalt facilities.

Estimated no. of respondents: 60 respondents will report and 1,010 respondents will keep records.

Estimated no. of responses per respondent: 1.

Estimated total annual burden on respondents: 4,071 hours.

Frequency of collection: Once and on occasion.

Title: NSPS for Petroleum Dry Cleaners—Information Requirements (subpart JJJ) (ICR #0997.03; OMB #2060–0079). This is a renewal of a previously approved collection.

Abstract: Owners or operators of the affected facilities must notify EPA of construction, reconstructions, modifications, shutdowns, date of anticipated and actual start-ups, and date and result of all performance tests. They must also maintain records of all performance test results, as well as the occurrence and duration of any start-up or malfunction. The States and/or EP use these data to determine compliance with the standards, to target inspections, and, when necessary, to use as evidence in court.

Burden statement: The annual public burden for this collection of information is estimated to average approximately 8 hours per response for reporting, and 73 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather data needed, and review the collection of information.

Respondents: Owners and operators of petroleum dry cleaning plants which were installed after December 14, 1982, and having a dryer capacity greater than 84 pounds.

Estimated no. of respondents: 18.

Estimated no. of responses per respondent: 1.

Estimated total annual burden on respondents: 1,462 hours.

Frequency of collection: Once and on occasion.

Title: Benzene NESHAP—Information Requirements (subpart J) (ICR #1153.03; OMB #2060–0068). This is a reinstatement of a previously approved collection. The clearance for this collection expired July 31, 1990.

Abstract: Owners or operators of petroleum refineries and chemical manufacturers, must notify EPA of construction, reconstructions, modifications shutdowns, and date of anticipated and actual start-up. They must monitor for fugitive benzene emissions, and must keep records of this monitoring and of the leaks detected from valves, pumps, and compressors, as the steps taken to make repairs. Owners or operators must also submit semiannual reports of these emissions, leaks, and repairs. The States and/or EPA use these data to determine compliance, to target inspections, and, when necessary, as evidence in court.

Burden statement: The annual public burden for this collection of information is estimated to average approximately 17 hours per response for reporting, and 57 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather data needed, and review the collection of information.

Respondents: Owners and operators of petroleum refineries and chemical manufacturers.

Estimated no. of respondents: 200.

Estimated no. of responses per respondent: 2.

Estimated total annual burden on respondents: 17,965 hours.

Frequency of collection: Once and semiannually.

Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burdens, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530

Dated: October 19, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90–25135 Filed 10–23–90; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Senior Executive Service Performance Review Board Members

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the SES Performance Review Board of EEOC.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Henry, Director, Personnel Management Services, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC, 20507, 202/663–4306.

SUPPLEMENTARY INFORMATION: Pursuant to the requirement of section 4314(c)(1), chapter 43 title 5 U.S.C., membership of the SES Performance Review Board is as follows: Elizabeth Thornton, Deputy Legal Counsel, Equal Employment Opportunity Commission (Chairperson); Mr. Andrew Fishel, Managing Director, Federal Communications Commission; Ms. Evangeline Swift, Director, Office of Policy and Evaluation, Merit Systems Protection Board; Mr. John Seal (Alternate), Executive Officer, ACTION. Signed at Washington, DC on this 19th day of October, 1990.

Evan J. Kemp, Jr.,

Chairman.

[FR Doc. 90–25150 Filed 10–23–90; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Request for Comment on Personal Property Appraising

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Request for comments.

SUMMARY: The Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("Appraisal Subcommittee") is issuing a request for comments on the feasibility and

desirability of extending the provisions of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to the function of personal property appraising and personal property appraisers.

This request for comments affords all interested parties an opportunity to provide substantive comments and data on the possibility of creating an appraisal regulatory framework for personal property evaluations similar to the supervisory scheme for real estate appraisals. The Appraisal Subcommittee will cearefully review and consider the comments received within the context of completing its study.

DATES: Comments must be received on or before December 24, 1990.

ADDRESSES: All comments should be sent to the Appraisal Subcommittee, Federal Financial Institutions Examination Council, 1776 G Street NW., suite 850B, Washington, DC 20006 or delivered to the same address between the hours of 9 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Jim Porter at (202) 906–5743.

SUPPLEMENTARY INFORMATION: The purpose of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is to promote the safety and soundness of insured institutions by requiring the real estate appraisals utilized in connection with federally related transactions be performed in writing in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. Section 1122 of title XI directs the Appraisal Subcommittee of the Federal Financial Institutions Examination Council to conduct a study to determine the feasibility and desirably of extending the provisions of title XI to the function of personal property appraising and personal property appraisers in connection with Federal financial and public policy interests. The Appraisal Subcommittee is to report its findings to Congress in February 1991.

For the purposes of this Notice for Public Comment, "personal property" is defined as:

identifiable portable and tangible objects with are considered by the general public as being "personal," e.g. furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all property that is not classified as real estate. (Source: Uniform Standards of Professional Appraisal Practice published by The Appraisal Foundation.)

As part of this study the Appraisal Subcommittee is seeking, from all interested parties, substantive comments on issues surrounding the costs and benefits of extending the real estate appraisal regulatory scheme to personal property evaluation. The following questions raise significant issues on which comment is sought, but are not intended to be limiting in nature. Comments are invited on any substantive issue relating to personal property appraising and personal property appraisers. The Subcommittee is especially interested in any factual supporting information or examples that serve as the basis for comments, in particular, information presented in the form of lists, charts, graphs, and tables, which detail specific data. Please respond to as many of the following questions as you consider appropriate.

General

(1) Respondent Affiliation:
(a) A financial institution with federally insured deposits.
(b) A financial institution with trade association.
(c) A personal property appraisal firm or individual.
(d) A personal property appraiser trade association.
(e) A real estate appraisal firm or individual.
(f) A real estate appraiser trade association.
(g) Law firm or individual.
(h) Accounting firm or individual.
(i) Governmental agency.
(j) Other.

(2) What are the major categories of personal property used as collateral for loans and what are the methods for evaluation of each category?

(3) What types of loans collateralized by personal property have caused the largest losses to financial institutions?

(4) What role have weaknesses in the personal property evaluation process had in the losses on loans collateralized by personal property? If possible, segregate losses associated with failure to perfect an interest in collateral and losses from assets that are expected to depreciate more rapidly than the related loan amortizes from losses caused by faulty evaluation.

(5) What types of loans collateralized by personal property have a good record of performance and how has the collateral evaluation process assisted in maintaining the favorable record?

(6) What factors should be used in determing the level of detail required in a personal property evaluation?

(7) What are the similarities and differences between personal property lending and real estate lending? (For example, loan terms, loan-to-value ratios, emphasis on collateral protection, payment sources, methods for evaluating collateral and other pertinent aspects of the credit decision process.)

Personal Property Appraisal Standards

(8) Considering the diversity of categories of personnal property, is it feasible to have one set of uniform appraisal standards for all possible types of non-real assets or would there have to be different standards for major categories of personal property?

(9) What would be the direct and indirect cost of requiring federally mandated uniform personnal property appraisal standards and how can these costs be measured?

(1) How would public policy interests benefit from the creation of uniform personal property appraisal standards and how can these benefits by quantified?

Personal Property Licensing Procedures and Qualification Criteria

(11) If there is licensing, should there be one licensing process for all categories of personal property appraisers or should there be different licensing procedures for each major category of personal property?

(12) What should be the minimum qualifications criteria for appraisers that conduct personal property evaluations for insured financial institutions?

(13) What would be the direct and indirect costs of federally mandated licensing and how can these costs be measured?

(14) Would financial institutions and the federal deposit insurance system benefit from the creation of a licensing process and how can these benefits be qualified?

Regulation and Supervision of Personal Property Appraisers

(For discussion purposes only, questions #15 through #23 assume that uniform personal property appraisal standards and licensing of personal property appraisers are both feasible and desirable.)

(15) Who should establish the uniform evaluation standards—financial institution trade associations, personal property apraiser trade associations, regulatory agencies, federal or state legislative bodies, or others?

(16) What type of procedure should be required to initially formulate uniform standards and what would be the process for amending the standards?

(17) Who should establish the qualification and testing criteria—financial institution trade associations, personal property appraiser trade associations, regulatory agencies, federal or state legislative bodies, or others?

(18) Should the licensing and testing boards be state or federal agencies, trade associations, or some other form of organization?

(19) What type of procedures should be required initially to formulate licensing qualification benchmarks and what should be the process for amending the criteria?

(20) If uniform personal property appraisal standards are developed, what level of supervisory enforcement is required—should standards be made into regulations carrying the force of law, be informational safety and soundness guidelines, or have some other form?

(21) Should the standards, licensing requirements, and regulatory structure be imposed on a financial institution's purchase of, and investment in, personal property, or limited only to lending collateralized by personal property?

(22) If the licensing body is not a federal agency, should it be subject to federal monitoring and supervision and what type of disciplinary powers should the federal agency have, if any?

(23) If licensing is implemented, should registry fees for personal property appraiser be the same as those levied on real property appraisers?

Other Comments

(24) Please discuss other issues concerning the feasibility and desirability of extending the provisions of title XI to the function of personal property appraising and personal property appraisers not addressed in the previous questions.

(25) In summary, do you believe that uniform personal property standards and licensing of personal property appraisers are:

(a) Desirable and—

(b) Feasible?

Why?

Information generated from the comments received will be used to augment other sources of data available to the Appraisal Subcommittee and ensures that the Subcommittee's findings reflect the broadest range of possibilities.

Dated: October 19, 1990.

Fred D. Finke,

Acting Chair of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

[FR Doc. 90-25110 Filed 10-23-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Inquiry Into Practices Affecting Shipping in the United States/Japan Trade; Harbor Management Fund

The Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a ("FSPA" or "1988 Act") directs and authorizes the Federal Maritime Commission ("Commission") to take corrective action against foreign shipping practices that have an adverse effect upon the operations of United States carriers. Section 10002(b) of the FSPA provides that the Commission shall investigate whether "any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime services in a foreign country result in the existence of conditions that—(1) adversely affect the operations of United States carriers in United States oceanborne trade; and (2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States." 46 U.S.C. app. 1710a(b). The FSPA thus authorizes the Commission to investigate not only foreign governmental laws, rules or policies, but also the practices of foreign carriers or other persons or groups providing maritime or maritime-related services in a foreign country.

The FSPA defines "maritime services" as "port-to-port carriage of cargo by the vessels operated by ocean common carriers." 46 U.S.C. app. 1710a(a)(3). The FSPA defines "maritime-related services" as "intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf." 46 U.S.C. app. 1710a(a)(4).

In furtherance of the authority to investigate and take corrective action against adverse foreign shipping practices, section 10002(d) of the FSPA provides that the Commission may, by order, require common carriers and other persons to provide information to the Commission as is necessary and appropriate. 46 U.S.C. app. 1710a(d). The FSPA provides also that the Commission may require the response to such an informational order to be made under oath and in the form and within the time prescribed by the Commission. 46 U.S.C. app. 1710a(d).

In addition, section 15 of the Shipping Act of 1984 ("1984 Act") authorizes the Commission to require any common carrier to file with the Commission reports on that carrier's operations. 46 U.S.C. app. 1714(a). Whoever violates an order issued under the 1984 Act is liable for civil penalties. 46 U.S.C. app. 1712(a).

By separate Order issued pursuant to section 10002(d) of the FSPA and section 15 of the 1984 Act, the Commission is requiring certain named ocean common carriers to report on the status of a particular shipping condition in the United States/Japan trade ("Trade"). The particular condition which is the subject of the Commission's Order is a fund established by the Japan Harbor Transportation Association ("JHTA") which is known as the Harbor Management Fund ("Fund").

According to accounts appearing in the trade press and other sources of information, the JHTA levies a charge against U.S. and other carriers serving ports in Japan which charge is paid into the Fund. The charge imposed on U.S. and other carriers is allegedly not related to maritime services provided to carriers at Japanese ports but is used to finance other projects, in particular, an import distribution system, a type of project not generally considered the responsibility of ocean common carriers. Moreover, it has been reported that the Fund has been used to support nonshipping related business activities of JHTA members through the International Port Cargo Distribution Association ("IPCD"), an organization said to be created by JHTA. Press accounts also report allegations that the Fund's schedule of charges favors Japanese carriers, and that the Fund is at least implicitly supported by the Japan Ministry of Transport ("MOT"). The establishment and administration and use of the Fund by the JHTA raises a question of whether the Fund constitutes an unfavorable or adverse shipping condition in the U.S.-Japan trade, within the meaning of the 1988 Act. The Commission is not aware of any similar practice imposed upon Japanese carriers at U.S. ports.

The Commission's informational order requires the U.S.-flag and Japanese-flag carriers serving the Trade to report on the purposes and uses of the Fund, its effect on carrier operations, and possible disparate impact on U.S. and Japanese carriers and other matters.

The Commission notes that representatives of the governments of the affected countries will be holding a series of meetings beginning in November 1990 to discuss and seek to resolve the issue of the Fund. The

Commission welcomes and supports these efforts and hopes that the discussions will lead to a resolution of this issue. In this regard, the Commission is also seeking information from the U.S. Departments of State and Transportation concerning the Harbor Management Fund and the progress of these governmental discussions.

The Commission, however, has its own responsibility and obligation under the FSPA to keep U.S. trade in shipping services open and free of unfair impediments and practices that adversely affect U.S. carriers. The Commission will therefore carefully review and evaluate the information received in response to its Order to determine whether further action under the Foreign Shipping Practices Act, or other authority, is warranted.

In order to have as full and complete a consideration of this issue as possible, the Commission, by this Notice, is also inviting all interested persons to file information, views, and comments with respect to the effect of the Fund on ocean shipping services used in the import or export of goods to or from the United States and Japan. The Commission welcomes these comments and any suggestions for action that the Commission might usefully take to ameliorate this problem. It is expected that the information received from all sources will allow for a full evaluation of the Harbor Management Fund and will enable the Commission to determine whether an investigation under the Foreign Shipping Practices Act, or other authority, is warranted or required.

Any interested person may submit such information, views or comments on or before November 20, 1990 by addressing them to the Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573 in an original and 15 copies.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-25060 Filed 10-23-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224-003813-013.

Title: Department of Transportation of the State of Hawaii/Matson Terminals, Inc. Terminal Agreement.

Parties:

Department of Transportation of the State of Hawaii

Matson Terminals, Inc.

Filing Party: Edward Y. Hirata, Director, Department of Transportation of the State of Hawaii, 869 Punchbowl Street, Honolulu, Hawaii 96813-5097.

Synopsis: The Agreement provides for design, construction and lease of improvements to the Sand Island container terminal. Payment of the cost of such improvements shall be in accordance with the terms and conditions set forth in this Agreement.

By Order of the Federal Maritime Commission.

Dated: October 18, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-25061 Filed 10-23-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004008-011.

Title: Port of Oakland/Marine Terminals Corporation Terminal Agreement.

Parties:

Port of Oakland (Port)

Marine Terminals Corporation (MTC).

Synopsis: The Agreement amends the parties' basic agreement to provide: (1) MTC with 90 days time, from the date the Port gives notice of the availability of assigned premises following completion of earthquake damage repairs, to procure users for available terminal areas; (2) for a minimum annual tariff revenue standard of 35,000 revenue tons per net acre; (3) for an annual crane usage compensation quota of 95 crane hours per net acre following the return of portions of the assigned premises after completion of earthquake repairs; and (4) for setting forth certain negotiated adjustment compensation factors to be applicable during the agreement's option extended period ending June 30, 1994.

Agreement No.: 224-200287-001.

Title: Port of Oakland/Mitsui O.S.K. Lines, Ltd. Terminal Agreement.

Parties:

Port of Oakland

Mitsui O.S.K. Lines, Ltd. (Mitsui).

Synopsis: The Agreement amends the final subparagraph of Paragraph 2 of the parties' basic agreement to provide that in the event Mitsui exercises either of its options to extend the term of the agreement and/or relocates its operation to another Port of Oakland facility, the parties will file with the Commission amendment(s) setting forth the exercise of such option(s) and/or, if applicable, the adjusted compensation involved.

By Order of the Federal Maritime Commission.

Dated: October 18, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-25062 Filed 10-23-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding

company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 13, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to acquire 100 percent of the voting shares of Marine Bank Chicago, Chicago, Illinois.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Button Gwinnett Bancorp, Inc., Norcross, Georgia; to become a bank holding company by converting the charter of its subsidiary, Button Gwinnett Savings Bank FSB, Norcross, Georgia, to a national banking association charter.

2. Community Trust Financial Services Corporation, Hiram, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Trust Bank, Hiram, Georgia.

3. Southtrust Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of SouthTrust Bank of columbia, N.A., Columbia, South Carolina, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Michigan Bank Corporation, Holland, Michigan; to acquire 100 percent of the voting shares of Maynard Allen State Bank, Portland, Michigan.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Husker Bank Holding Company, Lincoln, Nebraska; to become a bank holding company by acquiring Republic Bank of Nebraska, Columbus, Nebraska, in organization, which will be the successor to a merger with Commerce Savings Columbus, Columbus, Nebraska.

2. SCB Financial Corporation, Smith Center, Kansas, parent of Smith County Bank and Trust Company, Smith Center, Kansas; to merge with Lull and Rush Agency, Lebanon, Kansas, and thereby indirectly acquire First National Bank of Lebanon, Lebanon, Kansas. The banks will merge subsequent to the holding company merger.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Landmark Bancshares, Inc., Euless, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Landmark Bank-Mid Cities, Euless, Texas.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. Interwest National Bancorp, Reno, Nevada; to become a bank holding company by acquiring 85.67 percent of the voting shares of Fallon National Bank of Nevada, Fallon, Nevada.

Board of Governors of the Federal Reserve System, October 18, 1900.

Jennifer J. Johnson,

Associate Secretary of hte Board.

[FR Doc. 90–25086 Filed 10–23–90; 8:45 am]

BILLING CODE 6210–01–M

Deutsche Bank AG; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 13, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Deutsche Bank AG, Frankfurt (Main), Germany; to engage through a fee-sharing arrangement with Gleacher & Co. Inc., New York, New York in providing merger and acquisition and corporate advice to U.S. and non-U.S. clients; performing feasibility studies for U.S. and non-U.S. clients; providing valuation services in connection with foregoing; and rendering fairness opinions in connection with M&A transactions. First Regional Bancorporation, 76 Federal Reserve Bulletin ____ (1990); The Fuji Bank, Ltd., 75 Federal Reserve Bulletin 577 (1989).

Board of Governors of the Federal Reserve System, October 18, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–25087 Filed 10–23–90; 8:45 am]

BILLING CODE 6210–01–M

Valley National Bancorp, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Banking Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless

otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 13, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Valley National Bancorp, Wayne, New Jersey; to acquire Mayflower Financial Corporation and its subsidiary, Mayflower Savings Bank, SLA, both of Livingston, New Jersey, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9); and selling travelers checks, money orders with a face value of $1,000 or less and U.S. savings bonds pursuant to § 225.25(b)(12) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. ANB Corporation, Muncie, Indiana; to acquire Muncie Federal Savings Bank, Muncie, Indiana, and Service Management Corporation, Muncie, Indiana, and thereby engage in the operation of a savings association pursuant to § 225.25(b)(9); financial planning pursuant to § 225.25(b)(20); and brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in the State of Indiana.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Nebraska Bancorporation, Inc., Alliance, Nebraska; to acquire ANB Savings Bank, F.S.B., Alliance, Nebraska, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y. This is an OAKAR transation.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. U.S. Bancorp, Portland, Oregon; to acquire Heartfed Financial Corporation, Auburn, California, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 18, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–25088 Filed 10–23–90; 8:45 am]

BILLING CODE 6210–01–M

Citicorp; Proposal To Act as Drawee for Variably Denominated Payment Instruments

Citicorp, New York, New York, has applied, pursuant to secton 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to act as drawee directly and indirectly through its subsidiary, Citicorp Services Inc., Chicago, Illinois, for variably denominated payment instruments without limitation as to face value when such instruments are sold or issued by Citicorp affiliates or unaffiliated third parties. The Board previously has approved the issuance of certain payment instruments without limitation as to face value subject to a number of resstrictions that impose reporting and reserve requirements. *See, e.g., Well Fargo & Company,* 72 Federal Reserve Bulletin 148 (1986). Citicorp proposes to conduct this activity free of the reserve requirements previously imposed by the Board.

Citicorp proposes to issue payment instruments through unaffiliated financial institutions and other organizations as well as through its own depository institution subsidiaries. Where payment instruments are to be issued or sold by these unaffiliated institutions, Citicorp proposes that reserve requirements be eliminated. Where payment instruments with face amounts of over $10,000 are to be issued or sold by Citicorp affiliates, Citicorp proposes to place only the excess amounts over $10,000, rather than the entire face amount, in demand deposit accounts at Citicorp bank subsidiaries until the instruments are paid. Citicorp proposes to offer these services nationwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with the Board's approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). The Board has previously determined that, subject to certain reporting and reserve requirements, the sale of issuance of payment instruments without limit as to face value is an activity permissible for bank holding companies. *See, e.g., Wells Fargo & Co.* 72 Federal Reserve Bulletin 148 (1986).

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." 12 U.S.C. 1843(c)(8). Citicorp contends that permitting Citicorp to engage in the proposed activities would result in increased competition, greater convenience to customers, and increased efficiency in the provision of financial services.

In publishing the proposal for comment the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 13, 1990. Any request for a hearing on this application must be accompanied, as required by § 262.3(e)) of the Board's Rules of Procedure (12 CFR 262.3(e)), by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute,

summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, October 18, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-25090 Filed 10-23-90; 8:45 am]

BILLING CODE 6210-01-M

Patrick R. Wilmerding, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 7, 1990.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Patrick R. Wilmerding*, Brookline, Massachusetts, and J. Crosby Player, Lenox, Massachusetts; to acquire 24.99 percent of the voting shares of USA Bancorp, Incorporated, Boston, Massachusetts, and thereby indirectly acquire Olympic International Bank and Trust Company, Boston, Massachusetts.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *William Warner Williams, Sr.*, Opelika, Alabama; Kathryn Ann Mitchell, Opelika, Alabama; Jimmy Alan LaFoy, Opelika, Alabama; and Wanda Streetman McCaghren, Auburn, Alabama; to acquire 10.1 percent of the voting shares of Farmers National Bancshares, Inc., Opelika, Alabama, and thereby indirectly acquire Farmers National Bank of Opelika, Opelika, Alabama.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bobby J. Osborne*, North Little Rock, Arkansas; to acquire an additional 10.25 percent of the voting shares of National Banking Corp., North Little Rock, Arkansas, for a total of 27.55 percent, and thereby indirectly acquire National Bank of Arkansas in North Little Rock, North Little Rock, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lazard Freres & Co.*, New York, New York; LFCP Corporation, New York, New York; Corporate Advisors, L.P., New York, New York; Corporate Partners, L.P., New York, New York; Corporate Offshore Partners, L.P., Hamilton, Bermuda; State Board of Administration of Florida, Tallahassee, Florida; LFXR Corp., New York, New York; and LFXR Partners, L.P., New York, New York; to acquire 1.2 percent of the voting share of First Bank System, Inc., Minneapolis, Minnesota, and thereby indirectly acquire First Bank, N.A., Minneapolis, Minnesota; First Bank North, N.A., Duluth, Minnesota; First Bank Southeast, Rochester, Minnesota; First Bank Central, N.A., St. Cloud, Minnesota; First National Bank East, Grand Forks, North Dakota; First Bank of Minnesota, Virginia, Minnesota; First Bank South, N.A., Mankato, Minnesota; First Bank of North Dakota, N.A., Fargo, North Dakota; First Bank Montana, N.A., Billings, Montana; First Bank, N.A., Milwaukee, Wisconsin; and First Bank South Dakota, N.A., Sioux Falls, South Dakota; FBS Washington Bancorporation, Inc., Minneapolis, Minnesota, and thereby indirectly acquire First Bank Washington, Omak, Washington; and Central Bancorporation, Inc., Denver, Colorado, and thereby indirectly acquire Central Bank of Denver, Denver, Colorado; Central Bank Southeast, N.A., Englewood, Colorado; Central Bank of Pueblo, N.A., Pueblo, Colorado; Central Bank of North Denver, N.A., Denver, Colorado; Central Bank Centennial, Littleton, N.A., Colorado; Central Bank Westminster, N.A., Westminster, Colorado; Central Bank Broomfield, N.A., Broomfield, Colorado; Central Bank Chatfield, N.A., Littleton, Colorado; Central Bank Grand Junction, N.A., Grand Junction, Colorado; Central Bank of Greeley, N.A., Greeley, Colorado; Central Bank Academy Blvd, N.A., Colorado Springs, Colorado; Central Bank Aspen, N.A., Aspen, Colorado; Central Bank Glenwood Springs, N.A., Nagelwood Springs, Colorado; Central Bank Garden of Gods, N.A., Colorado Springs, Colorado; Central Bank of Chapel Hills, N.A., Colorado Springs, Colorado; and Central Bank of Aurora, N.A., Aurora, Colorado.

2. *Janice W. Muhar*, Grand Rapids, Minnesota; to acquire an additional 46.63 percent of the voting shares of Jan-Mar Corporation, Coleraine, Minnesota, for a total of 50 percent and thereby indirectly acquire First National Bank, Coleraine, Minnesota.

3. *Trust of Richard W. Perkins*, Wayzata, Minnesota; to acquire 28.13 percent of the voting shares of Duke Financial Group, Inc., St. Paul, Minnesota, and thereby indirectly acquire Citizens State Bank of Montgomery, Montgomery, Minnesota; Peoples Bank of Commerce, Cambridge, Minnesota; and State Bank of New Prague, New Prague, Minnesota.

4. *Mark R. White*, Grand Rapids, Minnesota; to acquire an additional 43.63 percent of the voting shares of Jan-Mar Corporation, Coleraine, Minnesota, and thereby indirectly acquire First National Bank, Coleraine, Minnesota.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Don R. Simcox*, Norman, Oklahoma; to acquire an additional 7.23 percent of the voting shares of City Bancorp of Norman, Inc., Norman, Oklahoma, for a total of 25.93 percent and thereby indirectly acquire City National Bank and Trust Company, Norman, Oklahoma.

G. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Bill Hull Barbee*, Kilgore, Texas, to acquire an additional 1.01 percent for a total of 1.17 percent; Francis Elmo Brown, Jr., Kilgore, Texas, to acquire 12.25 percent for a total of 12.89 percent; William Robert Crim, Kilgore, Texas, to acquire 4.08 percent for a total of 5.12 percent; Gibson Management Group, Inc., Longview, Texas, to acquire 1.63 percent;' Sanny Sue Holland, Kilgore, Texas, to acquire 2.04 percent; Thomas Mancel Hopkins, Kilgore, Texas, to acquire 0.82 percent; Hydro-Seal Valve Company, Inc., Kilgore, Texas, to acquire 4.08 percent; Don Milton Kerr, Kilgore, Texas, to acquire 8.16 percent for a total of 8.36 percent; Jimmy Dolan Kirkland, White Oak, Texas, to acquire 4.08 percent; Janet Stanley Miller, Dallas, Texas, to acquire 4.08 percent; David Mobley Grantor Trust, to acquire 8.16 percent; Tom Marion Mobley, II, Kilgore, Texas, to acquire 4.08 percent; Claude Wilford Rhodes, Jr., Kilgore, Texas, to acquire 4.08 percent; Robert Wayne Sigmon, White Oak, Texas, to

acquire 4.08 percent; Constance Smith, Kilgore, Texas, to acquire 2.04 percent; Ronald E. Spradlin, III, Kilgore, Texas, to acquire 4.08 percent for a total of 4.20 percent; Paul Henry Story, Kilgore, Texas, to acquire 0.66 percent; and Larry Von Tate, Kilgore, Texas, to acquire 4.08 percent of the voting shares of Kilgore First Bancorp, Inc., Kilgore, Texas, and thereby indirectly acquire Kilgore First National Bank, Kilgore, Texas.

Board of Governors of the Federal Reserve System, October 18, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-25089 Filed 10-23-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guidelines for Management of Acute Post-Operative Pain

A public meeting is being held on clinical practice guidelines for Management of Acute Post-Operative Pain. The guidelines are under development by a panel of experts and health care consumers, arranged by the Agency for Health Care Policy and Research. A Notice announcing the development of seven sets of clinical practice guidelines and inviting written comments was published in the **Federal Register** on August 28 (55 FR 35185).

In addition to the solicitation of written material in the August 28 **Federal Register**, a series of public meetings is being arranged to provide an opportunity for interested parties to provide relevant information and comments concerning the particular guidelines under development.

The meeting to address guidelines for Management of Acute Post-Operative Pain will be held on November 20, as follows:

November 20, 1990, 8 a.m. to Noon
J. W. Marriott Hotel, 1331 Pennsylvania Avenue, Washington, DC 20004 (Salons D & E)

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act) which established the Agency for Health Care Policy and Research (the Agency) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act established, within the Agency, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Section 912 of the Act directs the Forum to arrange for the development and periodic review and updating of: Clinically relevant guidelines that may be used by physicians, educators and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act also provides that by not later than January 1, 1991, the Administrator of the Agency shall assure the development of an initial set of guidelines, standards, performance measures, and review criteria that includes not less than 3 clinical treatments or conditions that:

1. Account for a significant portion of expenditures under the Medicare program, and have a significant variation in the frequency of the type of treatment provided; or
2. Otherwise meet the needs and priorities of the Medicare program.

Section 914 of the Act lists factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;
2. Reduce clinically significant variations among providers in making diagnoses and providing treatments, or reduce significant variations in the outcomes of health care services or procedures; and
3. Reduce variations in the services and procedures utilized for diagnosis and treatment (and potentially produce savings in health care expenditures).

Based on these statutory criteria, consultation with the Health Care Financing Administration (in accordance with 42 U.S.C. 1320b-12(a)), studies conducted by the Institute of Medicine, availability of reliable research data, and a high degree of professional consensus, the following topics have been selected for initial guideline development.

1. Visual Impairment due to Cataract in the Aging Eye
2. Diagnosis and Treatment of Benign Prostatic Hyperplasia
3. Urinary Incontinence in the Adult
4. Prediction, Prevention and Early Treatment of Pressure Sores in Adults
5. Delivery of Comprehensive Care in Sickle Cell Disease
6. Management of Acute Post-Operative Pain
7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting

To meet the requirement to assure the development of initial guidelines by January 1991, the Forum has arranged for panels of experts in the above-listed topics and consumers who will develop the specific guidelines. Panel responsibilities include assessment of the available scientific evidence and clinical consensus and determination of the scope of the guideline.

Arrangements for November 20 Public Meeting on Management of Acute Post-Operative Pain

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. The Office of the Forum for Quality and Effectiveness in Health Care is making the administrative arrangements for this public meeting on behalf of the panel. Individuals and representatives who would like to attend must register with the Forum at the address set out below by November 12 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information should also submit copies of these to the Forum by November 12. If more requests to make oral statements are received than can be accommodated between 8 a.m. and Noon on November 20, the co-chair persons will allocate speaking time in a manner which ensures, to the extend possible, that a range of views of health care professionals and providers, health care consumers, and product and pharmaceutical manufacturers is presented. Those who cannot be allocated their requested speaking time because of time constraints may be assured that their written comments will be considered by the panel in developing the guidelines.

Stephen H. King, M.D., Director, Forum for Quality & Effectiveness in Health Care, Agency for Health Care Policy & Research, Parklawn Building, rm 18A46, 5600 Fishers Lane, Rockville, Md 20857, Phone 301-443-8754, Fax 301-443-7470.

Meetings on additional topics will also be announced in the **Federal Register**.

Dated: October 18, 1990.

J. Jarrett Clinton,

Assistant Surgeon General, Acting Administrator.

[FR Doc. 90-25120 Filed 10-23-90; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Veterinary Medicine Advisory Committee scheduled for October 31 and November 1, 1990. The meeting was announced by notice in the Federal Register of September 28, 1990 (55 FR 39729). The decision to cancel this meeting was prompted by the uncertainty surrounding FDA's Fiscal Year 1991 budget appropriation.

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Center for Veterinary Medicine (HFV-244), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0830.

Dated: October 18, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-25119 Filed 10-23-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements in BPD-306, Termination of Enrollment; *Form Numbers:* HCFA-R-141; *Use:* The termination of enrollment requirement will allow States the option of restricting disenrollment from certain Medicaid HMOs and Community Health Centers by requiring enrollees to meet good cause criteria for disenrollment after the first month of enrollment; *Frequency:* On occasion; *Respondents:* State/local governments, businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* 2,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 500.

2. *Type of Request:* Revision; *Title of Information Collection:* Medicaid Program Budget Report; *Form Number:* HCFA-25; *Use:* State Medicaid Agencies prepares these forms which are used by HCFA for developing national Medicaid budget estimates, quantification of budget assumptions, and issuance of quarterly Medicaid Grant Awards; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 228; *Average Hours per Response:* 25; *Total Estimated Burden Hours:* 5,700.

3. *Type of Request:* Revision; *Title of Information Collection:* Medicaid Integrated Review Schedule; *Form Number:* HCFA-301; *Use:* Medicaid State Agencies are rquired to perform quality control reviews. The review schedule serves as the comprehensive data entry form for all quality control reviews in the Aid to Families with Dependent Children (AFDC), Food Stamps, and Medicaid programs; *Frequency:* Monthly; *Respondents:* State/local governments; *Estimated Number of Responses:* 37,000 Medicaid Assistance Only (MAO) and 65,192 AFDC; *Average Hours per Response:* MAO-.65 reporting and .43333 recordkeeping; AFDC-.10 reporting and .06659 recordkeeping; *Total Estimated Burden Hours:* 30,569 reporting and 20,374 recordkeeping for a total of 50,943.

4. *Type of Request:* Extension; *Title of Information Collection:* Medicare Therapeutic Shoe Demonstration Program Certification And Prescription Form; *Form Number:* HCFA-609; *Use:* These forms are completed by providers participating in a demonstration and are used by the demonstration contractor to check Medicare eligibility, randomize applicants, and provide baseline information for the evaluation; *Frequency:* Annually; *Respondents:* Businesses/other for profit; and small businesses/organizations; *Estimated Number of Responses:* 27,488; *Average Time per Response:* 5 minutes; *Total Estimated Burden Hours:* 2,291.

5. *Type of Requests:* Extension; *Title of Information Collection:* Chronic Renal Disease Medical Evidence Report; *Form Number:* HCFA-2728; *Use:* These forms are completed by End-stage Renal Disease (ESRD) facilities and patients so that HCFA and the Social Security Administration can determine whether ESRD claimants are entitled to Medicare benefits; *Frequency:* On occasion; *Respondents: Individuals/households, businesses/other for profit; and small businesses/organizations; Estimated Number of Responses:* 48,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 12,000.

6. *Type of Request:* Revision; *Title of Information Collection:* Medicaid Integrated Quality Control Review Worksheet; *Form Number:* HCFA-316; *Use:* These forms are completed by State agencies to collect both case characteristics and quality control data for all quality control reviews for the Aid to Families with Dependent Children (AFDC), Food Stamps, and Medicaid programs; *Frequency:* Monthly; *Respondents:* State/local governments; *Estimated Number of Responses:* Integrated States: 17,700 for Medical Assistance Only (MAO) and 1,091 for ineligible AFDC stratum cases; non-integrated States: 20,582 for MAO and 1,468 for ineligible AFDC stratum cases; *Average Hours per Response:* Reporting: Integrated States 5.42 for MAO and 2.71 for ineligible AFDC stratum cases; non-integrated States: 8 for MAO and 4 for ineligible AFDC stratum cases; Recordkeeping: Integrated States: .6 for MAO and .8 for ineligible AFDC stratum cases; non-integrated States: .33 for MAO and .67 for ineligible AFDC stratum cases; *Total Estimated Burden Hours:* 269,419 (reporting) and 19,269 (recordkeeping) for a total of 288,688.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: October 16, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-25122 Filed 10-23-90; 8:45 am]

BILLING CODE 4120-03-M

[BPO-091-PN]

Medicare Program; Data, Standards and Methodology Used To Establish Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice describes the data, standards, and methodology that would be used to establish fiscal intermediary and carrier budgets for fiscal year (FY) 1991, beginning October 1, 1990. Intermediaries and carriers assist in the administration of the Medicare program by performing numerous functions related to paying for medical services and equipment.

Sections 1816(c)(1) and 1842(c)(1) of the Social Security Act require us to publish for public comment in the Federal Register data, standards, and methodology we intend to use to establish budgets for Medicare intermediaries and carriers.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 23, 1990.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-091-PN, P.O. Box 26676, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPO-091-PN.

If you prefer, you may deliver your comments to room 309-G Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC or to room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in room 309-G of the Department's office at 200 Independence Avenue SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone 202-245-7890).

FOR FURTHER INFORMATION CONTACT: J. Thomas Hessenauer, (301) 966-7542.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of part A of the Medicare program (Hospital Insurance) under agreements with the Secretary of HHS. These agencies or organizations are known as fiscal intermediaries, and they perform bill processing and benefit payment functions for the Medicare program. Most providers of services (such as hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of the beneficiaries.

Under section 1842 of the Act, the Secretary of HHS is also authorized to enter into contracts with entities, known as carriers, to fulfill various functions in the administration of part B of the Medicare program (Supplementary Medical Insurance). Beneficiaries, physicians, and other suppliers of services or supplies, submit claims to these carriers. The carriers determine whether the services or supplies are covered under Medicare and the payment amount (usually on the basis of reasonable charges) for the services or supplies and then make payment to the appropriate party.

Fiscal Intermediary and Carrier Budget Process

Oversight of intermediary and carrier performance by HCFA is exercised by staff of both the central office and regional office (RO). In general, national policies are addressed at the central office level, and regional and local policies and operations are addressed by the regional offices. Communication between HCFA and the intermediaries and carriers is continuous. Established consultation workgroups, consisting of representatives of HCFA central office, regional offices and Medicare contractors, meet periodically.

HCFA central office is responsible for developing a national contractor budget for both part A and part B of the Medicare program. The budget is formulated over a 15-month period, beginning in March of the year preceding the fiscal year to which it applies. It is formulated after input from the contractor community, HCFA's ROs, various central office components, several levels in the Department of HHS, and the Office of Management and Budget (OMB). Prior to submittal to the President for approval and forwarding to Congress.

Our past practice has involved use of the HCFA ROs in obtaining budget estimates from the contractors. The ROs' assessment of the contractor's needs is reviewed during a budget level determination process based on current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by Congress. subsequently allocate funding within these constraints.

Section 4035(a) of Public Law 100-203; the Omnibus Budget Reconciliation Act of 1987 (OBRA7), amended sections 1816(c) (1) and 1842(c) (1) of the Act by requiring the Secretary to publish in the **Federal Register**, by no later than September 1 before each fiscal year, the final data, standards, and methodology to be used to establish budgets for fiscal intermediaries and carriers under these sections for that fiscal year. We also are required to publish in the **Federal Register** for public comment the data, standards, and methodology we will use at least 90 days before September 1.

We have been unable to meet the statutory mandate to publish a proposed notice at least 90 days before September 1. Although we have not published the proposed notice within the timeframe contemplated by the statute, we nevertheless want to assure interested parties that they will be provided an adequate opportunity to comment on the data, standards, and methodology to be used to establish budgets before they are issued in final. To the extent that comments received warrant revisions to the proposed data, standards, and methodology, we will make such changes before issuing the final notice. Moreover, if appropriate, we will issue revised Budget Performance Requirements (BPRs) to intermediaries and carriers. We will also renegotiate any affected areas of intermediary and carrier budgets within the level of funding made available by Congress.

Additionally, as in prior years, we have had and will continue to seek extensive input from the involved parties, particularly contractors. Their input is used as part of the basis for the national contractor budget that was presented to Congress. That budget is the basis' for the contents of this notice. Therefore, we do not believe that the delay in publishing this proposed notice will disadvantage the contractors as they have already been apprised of the contents of this document at meetings, via letters, and telephone calls. The delay will neither diminish the depth of the consultation nor the negotiation with the parties most affected by this notice.

We will make every effort to meet the requirement to publish a final notice by September 1. If providing a 30 day comment period and evaluating comments after the proposed notice on the data, standards, and methodology is

published makes this not possible, we will make every effort to publish the final notice as near as possible to September 1.

II. Overview of Fiscal Year 1991 National Medicare Contractor Budget: Data, Standards and Methodology

The FY 1991 Medicare contractor budget request was submitted to Congress in January 1990. Due to budget constraints the workload for the FY 1991 request is expressed in terms of work processed and for part A (82.4 million) is 1.4% less than the FY 1990 workload which was based on receipts. For part B (465.1 million) the workload results in a 0.5% increase. Our estimate involved the use of a regression model that uses the last 36 months of actual contractor workload data. The software runs the historical data through five different statistical models, selects the one best suited to the characteristics of the data, and provides a forecast using the model providing the best fit. For the FY 1991 projections, we used January 1990 data which were the latest available at the time. The resulting projections will be updated monthly to assure that the most timely data are available for budgeting purposes.

Based on the projected FY 1990 unit costs for processing bills and claims, we applied a 3.3 percent inflation factor (the economic assumption used by the OMB based on changes to the Consumer Price and Wage Index as developed by the Department of Labor). This amount is then further adjusted for savings achieved by prior and anticipated productivity investments, and costs associated with new legislation. This calculation results in a new unit cost, which, when multiplied by the part A and/or part B workloads, shows the total amount to be earmarked for bills and claims payment in FY 1991.

A. Medicare Contractor Functional Areas

The Medicare contractor budget consists of seven functional area responsibilities performed by intermediaries for part A and eight functional area responsibilities performed by carriers for part B. The functional area responsibilities for part A are: (1) Bills Payment; (2) Reconsiderations and Hearings; (3) Medicare Secondary Payer; (4) Medical Review and Utilization Review; (5) Provider Audit (Desk Reviews, Field Audits and Provider Settlements); (6) Provider Reimbursement; and (7) Productivity Investments. The functional area responsibilities for part B are: (1) Claims Payment; (2) Reviews and Hearings; (3) Beneficiary/Physician Inquiries; (4) Medical Review and Utilization Review; (5) Medicare Secondary Payer; (6) Participating Physicians; (7) Professional Relations; and (8) Productivity Investments. These functions are funded from the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) trust funds. The data, standards and methodology used in these functional areas are discussed in section III. In the following national budget summary, we have combined the discussion of functional areas common to both intermediaries and carriers. However, data specific to part A and part B are provided under each heading.

1. Bills Payment and Claims Payment

We currently estimate the part A processed workload to be 82.4 million bills in FY 1991. This estimate results from a workload regression model that uses the last 36 months of intermediary data through January 1990 and the current funding available for processing claims. Intermediaries are required by section 1816(c) of the Act (as amended by section 9311 of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86)), to pay 95 percent of part A bills within 24 days of receipt. This workload level includes 2.2 million claims for PAP smears as provided for in Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 (OBRA 89).

The part B processed workload is currently projected at 465.1 million claims based on the current funding available. All part B claims must be processed within the same timeframes as part A bills, except that participating physician claims must be paid within 17 days of receipt. This workload level includes 4.5 million claims for PAP smears as provided for in OBRA 89.

Section 4031 of OBRA 87 amended sections 1816(c) and 1842(c) of the Act to impose a 14-day payment floor standard effective October 1, 1988 for part A bills and part B claims. This standard provides that no payment may be made within 14 calendar days after the date that the bill/claim is received. The OBRA 87 provisions expired in September 1989. HCFA has administratively retained the statutory floor with a waiver period. The waiver period is scheduled to end on September 30, 1990. Thus, the 14-day payment floor will apply again beginning October, 1990. Section 4031 also prohibits the Secretary from issuing before October 1, 1990, other regulations, instructions or policies intended to slow down Medicare payments.

2. Reconsiderations (Reviews Under Part B) and Hearings

This function includes all activities related to guaranteeing due process of law as a result of contractor action (i.e., disallowances) on bills and claims.

Section 4032 of OBRA 87 amended section 1816(f) of the Act to require that intermediaries process 75 percent of reconsiderations within 60 days beginning in FY 1990. As a result of the FY 1990 funding levels, we reevaluated the reconsiderations, reviews, and hearings process with an aim to further increase efficiency. For FY 1991 we expect to achieve reduced costs through expanded use of on-the-record and telephone hearings and through the use of audio response units to replace labor intensive methods of answering inquiries.

3. Medicare Secondary Payer

The Medicare Secondary Payer (MSP) function is the first of three initiatives (Medicare Secondary Payer, Medical Review and Utilization Review, and Provider Audit) we developed as "Payment Safeguards" in an attempt to safeguard the Medicare program against improper payments.

The focus of the MSP initiative is to ensure that the Medicare program pays for covered care only after reimbursement from other primary insurers has been made. An intermediary and a carrier must administer the program in a manner that achieves maximum savings and cost avoidance to the Medicare trust funds. Medicare Secondary Payer activities center on claims involving: the working aged; spousal working aged; beneficiaries with end-stage renal disease; beneficiaries eligible for payment under automobile, medical liability and no-fault insurance; individuals eligible for or receiving workers compensation; and the disabled. By concentrating efforts in these key areas, the Medicare program has had tremendous success in recovering and reducing improper program payments.

Medicare contractors are responsible for identifying MSP situations and aggressively pursuing the recovery of improper payments from the appropriate party. In conjunction with the actuary, we develop specific savings goals for each contractor based on past performance.

The standard for determining the amount of MSP funding a contractor will receive in FY 1991 is based on savings goals, workload volumes, required systems changes, and any special

projects that may be assigned to contractors.

We gather actual MSP claims volume, overall claims volume for the prior fiscal year, and special project data (e.g., cost of claims, amount of savings achieved). We compare a contractor's previous year's data to the contractor's projections for the next fiscal year and allocate funding in proportion to the savings goals to be achieved. Additional funding is allocated for specific projects as required. The amounts vary based on the scope of the project, extent of systems changes if any, and workload.

For FY 1991 we have included funding to implement the IRS/SSA/HCFA data match project created by section 6202 of OBRA '89 (Pub. L. 101-239).

4. Medical Review and Utilization Review

In addition to processing and paying claims from providers of services and Medicare beneficiaries, the contractors perform a medical review (MR) of claims to determine whether services were medically necessary and constituted an appropriate level of care.

Intermediaries are responsible for medical review of HHA, SNF, outpatient hospital services (excluding surgery), and other outpatient services, such as those provided by rehabilitation facilities, rural health clinics, etc. This review assures that medical care is necessary and appropriate and that quality medical services are delivered to Medicare beneficiaries.

During FY 1991, the review of HHA and outpatient services will account for most of the uses of medical review resources. Medical review of all HHA provider claims will be the responsibility of regional home health intermediaries.

In FY 1991, we will continue efforts in the standard cost analysis system developed in FY 1987 to evaluate the efficiency of carrier prepayment medical review screens. This systematic approach is expected to yield benefits to the medical review process, such as: (1) A current inventory of the number, types, and cost effectiveness of medical review screens; (2) ability to analyze the current inventory of screens and set a framework that yields a high return on investment; (3) ability to target strategies for specific medical review activities; and (4) measurement of the relative cost effectiveness of screens among different contractors.

In FY 1991, we will continue to focus on prepayment review, including additional mandatory prepayment screens. We also will continue with our efforts with postpayment medical review.

The carrier postpayment process consists of preparing profiles of providers and beneficiaries, identifying patterns of fraud and abuse, correcting program abuse or overutilization, preventing further abuse in service utilization by educating providers in acceptable norms and proper billing practices, recommending administrative action, where appropriate, and identifying areas for the development and installation of future prepayment review screens.

For FY 1991 an analytical diagnosis-based approach to identification of services for more intensified MR, termed patterns of care, will be implemented nationally. Funding is for carrier staff review of the system rather than development, which will be accomplished in FY 1990. We estimate that 20% of FY 1991 prepayment MR will be diagnosis related.

Carriers must continue to provide support to HHS/Office of Inspector General (OIG) in developing cases of suspected fraud and abuse. This is in addition to the fraud and abuse activities that currently exist in other intermediary and carrier functions.

The distribution of funding is in proportion to workload, individual contractor medical review/utilization review (MR/UR) projects, and the budget constraints brought about by reduced funding availability.

The actual and cost avoidance benefits in safeguarding program dollars are significant. Educational encounters lead to fewer incorrect billings and administrative cost avoidance in the form of reductions in the number of requests for reviews and hearings. We will continue to focus on: review of providers with demonstrably aberrant billing and practice patterns; review of educational efforts; and development of a methodology for quantifying the level of program and administrative cost avoidance resulting from postpayment medical review activities.

Carrier medical review costs will be offset by avoiding payment for medically unnecessary services through proper medical review/utilization review.

5. Provider Audit

For FY 1991 we have planned for the full compliment of audits to help in the identification and prevention of improper payments. These will include desk reviews, field audits, special audit activities and final settlements. Considering provider growth and the increase in cost-based reimbursement to PPS hospitals, HCFA will continue to give priority to the audits of PPS multi-facility hospitals as well as chain-affiliated providers. In addition, by concentrating effort on HHAs and SNFs which meet minimum audit criteria, HCFA will maximize the potential savings available from these providers. HCFA will also focus audit efforts on costs reported and allocated by home offices, since there are numerous incentives for chain home offices to maximize reimbursement through creative cost allocation practices.

6. Provider Reimbursement (Part A Only)

In FY 1991, Medicare contractors are required to provide reimbursement services to 26,000 health care providers. This represents an increase of approximately 3.5 percent over the number of providers requiring reimbursement services in FY 1990. Reimbursement services are required for provider-based SNFs and HHAs in addition to ESRD facilities, comprehensive outpatient rehabilitation facilities (CORFs), and hospices regardless of whether the provider is audited on an annual or other basis. The budget provides for the following activities:

- Collection of Provider Overpayments—A system must be maintained to collect and record overpayments made to providers. In addition to collection and recordkeeping activities, contractors will investigate and provide profile data on uncollectible overpayment cases and provide monthly reports to HCFA on the uncollectible accounts.
- Interim Payments—Interim payment rates must be established and periodically reviewed throughout the fiscal year for all Medicare providers. The interim rates process requires the review of provider cost and utilization statistics and the calculation of adjusted rates.
- Consultative Services—Onsite assistance must be provided to any provider experiencing difficulties in preparing the cost report, preparing claims or any other payment area.
- Records and Reports—According to specific instructions from HCFA, files and records must be established and maintained by the contractors to ensure proper payments to providers. In addition, several different provider cost and payment reports must be prepared and submitted quarterly to HCFA.
- System Tracking for Audit and Reimbursement (STAR)—The STAR system collects data on individual provider identification such as: name, provider number, number of beds/visits etc. The system also collected all data on the cost of Medicare contractors

performing audit and reimbursement functions, including interim rate setting, desk reviews, settlements and field audits. The STAR system will be integrated with other data retrieval systems to eliminate duplicate reporting and to establish one data base for information reported by intermediaries.

In determining the amount of reimbursement funding each contractor receives, we analyze provider profiles submitted by contractors. The provider profiles show types and numbers of periodic interim payment (PIP) and non-PIP providers. We review prior periods of reimbursement funding and assess the contractor's future needs based on projected provider workload and the availability of funds. We make every attempt to distribute funds in proportion to workload.

7. Productivity Investments

The costs of implementing new initiatives designed to improve the effectiveness of Medicare program administration are referred to as productivity investments (PIs). Productivity investments generally provide start-up funds for contractor activities. Once these projects are operational, funding for these projects becomes part of the contractor's ongoing costs. The criteria for selection of PIs to be implemented vary. For example, some PIs are required by legislation or regulatory requirements. We also fund projects that will improve administrative cost efficiency, for example, the Common Working File and Shared Maintenance/Shared Processing.

There is no single distribution methodology for the allocation of PI funds. After we determine the national cost of a PI, funds are divided among the contractors based on either the contractors' cost estimates or through HCFA derived formulas based on project specifications. Other PI initiatives require equal effort by all contractors regardless of size, and are, therefore, divided equally among contractors. Finally, other PIs, such as the common working file and shared maintenance/shared processing, are given only to contractors that are involved in the specific projects.

In FY 1991, we will fund the following PIs: for part A—common working file, shared software maintenance, shared claims processing, quality assurance program initiatives, facilities management and changes in UB–82; and for part B—common working file, shared software maintenance, shared claim processing, quality assurance program, revised HCFA 1500, beneficiary initiatives, durable medical equipment, standard statistical conventions, facilities management, revision of payment software, payment for physicians in under-served areas, electronic media claims, and provisions initiated as a result of OBRA 89.

8. Beneficiary/Physician Inquiries

The Medicare program is complex. It is based on many provisions required by law, regulations and policy dealing with entitlement, coverage of services, comprehensive payment rules, and the rights and responsibilities of beneficiaries. Since contractors are the direct link between beneficiaries, physicians, and the program, this activity includes all costs related to beneficiary, physician and supplier inquiries generated by means of telephone calls, correspondence, and personal visits, estimated to be 29.1 million in FY 1991. Current contractor performance and evaluation criteria and standards require that inquiries be processed within 30 calendar days. For telephone inquiries, the level of service for a busy signal must equate to an "all trunks busy" of no higher than 20 percent. All calls must be acknowledged in no more than 20 seconds and must be handled by a telephone representative within 120 seconds of acknowledgement. The standards require that 80 percent of the calls must be handled to completion during the initial call and that call backs must be made within 2 working days. These standards apply to both toll free and local calls.

9. Participating Physicians (Part B Only)

Participating physicians are those who agree to accept assignment on all Medicare claims in return for certain incentives/benefits. All physicians must be given an opportunity to enroll/disenroll in the participation program annually.

The participating physician program for carriers includes the following activities: monitoring Maximum Allowable Actual Charges (MAAC); producing and distributing Medicare Participating Physician Directory (MEDPARD); monitoring nonparticipating physicians for compliance with section 1842(m) of the Act as added by section 9332(d) of OBRA 1986; monitoring participating physicians; furnishing toll-free electronic media claims lines for participating physicians; responding to participation related inquiries from beneficiaries in a timely and responsive manner; enrolling participating physicians and suppliers; monitoring systems changes for pricing screens and files related to the participating physician program; and monitoring data requests (participation counts).

When the Congress initially provided funding for the participation program, we identified each of the activities involved and priced each activity nationally. An algorithm was developed for distributing the funds to each contractor for each activity. Some algorithms distributed funds based on workload and others based on the number of sites with systems changes. One activity was funded based on the participation rates. We then totaled the cost of the various activities for each carrier and provided funding accordingly.

Section 9332 of OBRA 86 requires HCFA to pay carrier bonuses for increasing the rate of physician participation in the Medicare program. The methodology used to determine carrier bonuses for FY 1991 will be published in a separate notice.

10. Professional Relations

The success of the Medicare program depends upon the continuing cooperation of individuals and institutions providing health care services.

Carriers must notify physicians and suppliers, in writing, of policy and procedure changes prior to the effective dates of changes. They are to develop claims prior to denial or reduction. Carriers must initiate regular contact with physicians/suppliers through representative organizations. Scheduling regular and periodic training for new personnel and as part of a continuing education program for previously trained staff on current Medicare coverage, reimbursement, and billing policy is required. Carriers must conduct regular meetings with beneficiaries or their representative organizations to inform them about the participation program. Carriers must also provide adequate telephone service in order to answer queries concerning claims status and processing questions. The funding provided in FY 1991 will allow carriers to perform the above activities and others as outlined in the Medicare Carriers Manual, section 4600. Funding is also included for the enforcement of proper diagnostic coding of claims, identification of referring, ordering and rendering physician and other provisions as required by provisions included in OBRA 89.

11. Printing Claims Forms

Although this activity is not among the seven contractor functional areas, it is a part of the national Medicare contractor budget. In the interest of

maintaining standard formats and quality of Medicare entitlement and report forms, intermediaries and carriers supply beneficiary enrollment and provider cost reporting forms. The use of these forms is essential to beneficiary notification, effective and efficient contractor operations, and other program purposes.

With a steady increase in the number of beneficiaries and providers, we project a corresponding increase in a substantial number of HCFA forms.

B. Contractor Unit Cost Calculations

A key step in the contractor budget process is the development of contractor unit costs for processing part A bills and part B claims. A factor in the development of contractor unit costs is a reduction (where appropriate) of the unit cost based upon the application of the Industrial Engineering (IE) Study. Among other objectives, the IE study was commissioned by HCFA to develop an optimal unit cost for processing bills and claims. To do so, the performers of the study conducted on-site visits to virtually every Medicare contractor. The following is a brief description of how we used the results of the IE study.

The IE study determined through an analysis of quality, timeliness and cost, an optimal national unit cost range for processing each claim type and processing medium (a range was established in order to compensate for the variety of claims processing environments among contractors). For example, a part A contractor typically processes (among others) inpatient hospital bills. These bills are received in either hardcopy form or are electronically submitted. The IE study determined the optimal national unit cost range associated with processing a hardcopy inpatient bill versus an electronically submitted inpatient bill. The study did the same with every type and medium of bill and claim.

Using the ranges established by the IE study, we developed one optimal national unit cost for each type and medium of bill and claim. For part A, we used the appropriate mean optimal unit cost and for part B we used the low end of the optimal cost range as the optimal cost by claim type and medium.

After establishing the optimal national unit cost for all types and mediums of bills and claims, we determined the workload mix for each contractor by calculating the proportion of its work by bill/claim type and medium. We then applied the appropriate optimal national unit cost to the workload mix in order to develop a weighted unit cost for each contractor, resulting in the individualized optimal unit cost that was used in determining each contractor's unit cost as described in section III.C under Bills Payment and Claims Payment.

III. Fiscal Year 1991 National Medicare Contractor Budget: Standards, Data, and Methodology

After the President's FY 1991 Medicare contractor budget request was submitted to the Congress in January 1990, HCFA proceeded to develop budget and performance requirements to be issued to the contractors. These requirements outline the scope of work that intermediaries and carriers are expected to perform during the upcoming fiscal year in each of the functional areas for which they are responsible. In April 1990, the budget and performance requirements were issued to the regional offices. The regional offices add information pertinent to intermediaries and carriers within their own region. These final individualized requirements were sent to each intermediary and carrier in early June to provide them with assistance in preparing their FY 1991 budget requests. Intermediaries and carriers must submit their budget requests to HCFA no later than six weeks after the issuance of the budget guidelines.

While intermediaries and carriers are preparing their budget requests, the Division of Contractor Financial Management within HCFA will develop preliminary budget allocations for the functional areas based upon historical patterns, workload growth/inflation assumptions, and any other available information. Both central office and regional office staff will review intermediary and carrier budget requests as they are submitted. Regional office staff will discuss the differences between the intermediary and carrier requests and the HCFA derived allocations and negotiate with each intermediary and carrier a final, mutually acceptable budget within the limits of the funding available to HCFA The central office prepares a Financial Operating Plan (FOP) for each regional office that provides total regional funding authority for each functional area. The regional offices in turn prepare a Notice of Budget Approval (NOBA) for each intermediary and carrier that provides a full year budget plan subject to quarterly cash draw limitations.

A. Standards

In April 1990, the basic scope of work, along with new and special activities that intermediaries and carriers will be expected to perform, are described in the budget and performance requirements package. Intermediaries and carriers are expected to perform the work as described in the budget and performance requirements package and in accordance with the standards included in the CPEP for FY 1991. For consideration in developing their initial budget requests, we issued a draft copy of the CPEP standards to contractors on May 29, 1990.

B. Data

In developing the individual intermediary and carrier budgets for FY 1991, we will utilize the following sources of data that contain various workload volumes, functional costs, and manpower information: (The basic forms that supply the data that are utilized in developing intermediary and carrier budgets are the HCFA–1523/1524 and the HCFA–1565/1566.) Forms HCFA–1523/1524 (a multipurpose form which serves as the Budget Request, Notice of Budget Approval and Interim Expenditure Report); Forms HCFA–1523/1524A Schedule of Productivity Investments and Other; Forms HCFA–1523/1524B Schedule of Credits, EDP and Overhead; Forms HCFA–1523/1524C Schedule of Appeals; Forms HCFA–1523/1524D Schedule of MSP Costs; Forms HCFA–1525/1525A Contractor Audit Settlement Report (CASR); Schedules A, B, & C; Audit Priority Matrix; Crossover from CASR to Audit Priority Matrix; Provider Reimbursement Profile; Schedule of Providers Serviced; MSP Savings Report; MR/UR Savings Report; Form HCFA–2580 Cost Classification Report; Form HCFA–3259 Facilities and Occupancy Schedule; Forms HCFA–1565/1566 Carrier Performance Report/Monthly and Intermediary Workload Report; HCFA Actuary's Workload Estimates; OMB's Economic Assumption of 3.3 Percent; Industrial Engineering Study; Savings from Prior Productivity Investments; New Legislation Costs; Regional Office Recommendations; and Contract Provisions.

C. Methodology

The Medicare contractor budget is built around the previously listed seven major functions performed by intermediaries for part A and eight major functions performed by carriers for part B.

1. Bills Payment and Claims Payment

The individual intermediary and carrier workload levels for FY 1991 (subject to the national workload levels and approved funding) are determined by the regional offices based upon regional forecasted totals that are

derived from a statistical forecasting model. We are also projecting the number of bills/claims an intermediary and carrier expect to have pending at the end of FY 1990 using the same data. We then combine the FY 1991 receipt estimate with the anticipated end of FY 1990 pending level, and subtract the estimated FY 1991 pending for each intermediary and carrier to establish a processed workload (i.e., Estimated FY 1991 receipts + Estimated end of FY 1990 pending − Estimated end of FY 1991 pending = Estimated FY 1991 Processed Workload).

In order to price individual contractor bills/claims workloads, we develop a unit cost that is the cost of processing a single bill/claim. The individual intermediary and carrier unit costs for FY 1991 are calculated based upon unit costs (line 1 of the FY 1990 NOBA HCFA–1523/1524) in effect at the time that we perform our computations. The calculations include increases to recognize the cost of new legislation, and 3.3 percent for price inflation. Reductions associated with the application of the IE study and savings achieved from the common working file and other prior Productivity Investments will also be part of the formula employed in computing FY 1991 target unit costs. The regional offices will negotiate with intermediaries and carriers to resolve any differences between the HCFA target unit cost and the contractors' requested unit costs, within the limits of the funding available to HCFA.

2. Reconsiderations (Reviews Under Part B) and Hearings

We will allocate funding based on the amount of dollars spent (line 2 of the NOBA HCFA–1523/1524C) in the prior year, adjusted for inflation and volume. Specifically, we will adjust the previous year's costs for reconsiderations and hearings by the percentage change in inflation, which for FY 1991 is a 3.3 percent increase (a rate that reflects productivity gains generally for the economy, but which may cause over/understatement of costs depending on the productivity efficiencies experienced by the individual contractors), and for the percentage change in workload. We have revised these forms to allow us to capture more discrete workload and cost data. We will use these data to develop budgeted costs for reconsiderations and hearings as we do for bills payment and claims payment costs, that is, forecasted processed volume times unit cost. The individual intermediary and carrier budget allocations for reconsiderations, reviews, and hearings are determined by using the old methodology. If sufficient reliable data are collected, then we may redetermine the allocations by multiplying anticipated workload levels in FY 1991 times the newly developed unit cost. We will consider the current pending workload and projected receipts for each intermediary and carrier. The regional offices will negotiate with intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

3. Beneficiary/Provider Inquiries (Part B Only)

The prior year's cost is adjusted by the percentage change in inflation, which for FY 1991 will be a 3.3 percent increase, as well as any projected workload increase or decrease to establish a budgeted amount for beneficiary and provider inquiries. We also consider special conditions unique to specific carriers in negotiating the budget. We are now developing new reporting requirements that will allow us to capture more discrete workload and cost data. We are beginning the year using the old budgeting methodology until we have sufficient reliable data under the new reporting system. We may use the data to develop a budgeted cost for beneficiary/provider inquiries by multiplying forecasted processed volume times unit cost The regional offices will negotiate with the carriers to resolve any differences between the HCFA allocations and carriers' requests, within the limits of the funding available to HCFA.

4. Provider Reimbursement (Part A Only)

In determining individual intermediary budgets for reimbursement activities, we first calculate an FY 1990 unit cost using the funding included on the latest FY 1990 NOBA (HCFA 1523/1524C) and dividing that amount of money by the workload reported on the Schedule of Providers Serviced (SPS) for the same period.

The SPS is a listing of all the facilities serviced by the intermediary. This report offers a more detailed description of the providers because it identifies them by type, bed size, and freestanding or provider-based and whether they are paid on a periodic interim payment basis. The SPS is submitted with each initial budget request so that a part of the analysis is the comparison of the composition of the provider community serviced by the intermediary and any change reported between fiscal years.

The unit cost found by dividing the amount of the FY 1990 NOBA by the workload from the SPS for the same period forms the first of the "raw" data used to project the FY 1991 budget. This unit cost is increased by 3.3 percent, which is the rate of inflation provided to HCFA by OMB. This adjusted unit cost is then multiplied by the FY 1991 workload as reported on the SPS. The result is then adjusted based on a review of cost documentation of special initiatives.

In order to resolve major differences between the intermediary's budget request and the amount developed by the preceding approach, we analyze the reimbursement profile that is an addendum to the budget request. This profile shows the cost claimed by type of reimbursement activity (Interim Rate Determinations, Overpayment Recoupment, Consulting Services, etc.).

The regional offices will negotiate with the intermediaries to resolve any differences between the HCFA allocations and the intermediaries' requests, within the limits of the funding available to HCFA.

5. Provider Audit (Part A Only)

For FY 1991, the provider audit function is divided into two major activities, desk reviews and settlements.

The basic report on all audit analysis is based on the Contractor Auditing and Settlement Report (CASR) (HCFA–1525/1525A). This form provides a breakout of audit activities and costs by type of provider as well as documents the savings incurred as a result of audit activity. Using this as a base, the desk review costs are developed by projecting the workload using the total count of providers serviced. (All cost reports must be desk reviewed.). The count of providers serviced is compared to the total shown on the Schedule of Providers Serviced for verification. We then multiply this count by the unit cost per desk review (developed from the latest CASR for FY 1990) to determine the cost of handling the FY 1991 workload at the FY 1990 unit cost.

Settlement costs are based on the workload projected in the intermediary's budget request multiplied by the unit cost for settlements found in the most recent CASR for FY 1990. This will cost out the FY 1991 activity at the FY 1990 level of expenditure.

The overriding priority of all audit efforts is comprised of the special activities required by legislation (e.g. COBRA, OBRAs). The second priority is that all cost reports must be desk reviewed, and, to the extent possible, settled.

All of the above costs are adjusted for inflation, which for FY 1991 will be a 3.3 percent increase.

The regional offices will negotiate with intermediaries to resolve any differences between the HCFA allocations and the intermediaries' requests, within the limits of the funding available to HCFA.

6. Medicare Secondary Payer (MSP)

We will extract data, including processed volumes, costs and program savings, from the HCFA–1523/1524D and the NSF Savings Report (HCFA. 1563/1564) to determine NSF funding allocations. These reports will include IRS/SSA/HCFA data match costs, volumes, and savings. In allocating the FY 1991 MSP budget to individual intermediaries and carriers, we consider (1) estimated potential savings goals by category and by State (e.g., working aged and spousal working aged insurance, automobile, medical liability and no-fault insurance, end-stage renal disease, disability, and workers compensation); (2) the relationship of available funds to expected savings among contractors; and (3) staffing mix differences, levels of systems sophistication, and special tasks. The regional offices will consider items 1, 2, and 3 of this paragraph when negotiating with intermediaries and carriers within the limits of the funding available to HCFA.

7. Medical Review/Utilization Review (MR/UR)

The individual intermediary and carrier MR/UR budgets for FY 1991 will be calculated in three components: prepayment medical review, postpayment activities, and medical review policy development (carriers only). As a part of the budget guidelines, we asked intermediaries and carriers to estimate (1) the number of bills/claims to be processed by bill types, (2) the required funding, (3) staff level changes expressed in terms of percent of full-time equivalents, and (4) the percent of electronic data processing costs attributable to MR/UR review. We will allocate to each contractor prepayment and postpayment medical review funding based upon the workload that an intermediary or carrier projects will be processed under the FY 1991 budget guidelines for medical review and the funds requested by the intermediary or carrier to perform the reviews. Carrier budgets for medical review policy development are based on levels of sophistication of carrier policy development and dissemination and the need for medical direction. The funding calculations for all MR/UR activities will include a 3.3 percent factor for price inflation where applicable. The regional offices will negotiate with intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

8. Participating Physicians (Part B Only)

In determining the individual carrier funding levels for the participating physician program for FY 1991, we considered the following factors: the number of physicians in the carrier's service area; the carrier's current participation rate; the carrier's recent performance in increasing its participation rate; the scope of work to be performed as outlined in the budget guidelines; and last year's cost experience. Since participating physicians are eligible for free electronic media claims (EMC) lines for billing, allowance has been made for these expenses. Carriers with lower participation rates will receive greater funding for MAAC violation monitoring and monitoring of nonparticipating physicians for compliance with elective surgery disclosure requirements. Carrier monitoring funds are allocated based on the national percentage of nonparticipating physicians. All carriers will receive the same funding amount for reporting participation statistics. Our computations of the carriers' budgets for these activities will include an allowance for price inflation. The regional offices will negotiate with the carriers to resolve any differences between the HCFA allocations and the carriers' requests, within the limits of the funding available to HCFA.

9. Productivity Investments

The costs of implementing legislation and new initiatives designed to improve the effectiveness and efficiency of Medicare program administration are referred to as Productivity Investments. Several allocation methodologies will be employed in calculating the Productivity Investment budgets for individual intermediaries and carriers. For those projects involving only single contractors or small groups of contractors, we will allocate funds based upon the specifications of the particular project. For those projects involving all intermediaries and/or carriers in that the costs are driven by bill/claims volume, we will distribute the funding based upon our workload projections for each contractor. Finally, for those projects involving all intermediaries and/or carriers that require equal effort regardless of the contractor's size, we derived a standard allocation to be given to all contractors. The regional offices will negotiate with the intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

10. Professional Relations

In determining the individual carrier funding levels for the professional relations function for FY 1991, we considered the number of physicians and suppliers in the carrier's service area. Distribution of funds made available to HCFA for the performance of the professional relations function by carriers is made to each carrier based upon the ratio of physicians and suppliers in the carrier's service area to the national total of physicians and suppliers.

The sum of the preceding functions, plus printing costs, is the FY 1991 national Medicare contractor budget. HCFA distributes the funding to intermediaries and carriers in accordance with the established guidelines and allocations as previously discussed.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Also, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Administrator certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, fiscal intermediaries and carriers are not considered to be small entities. Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice such as this that may have a significant impact on the operations of a substantial number of small rural

hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice does not contain rules. Rather, the purpose of this notice is to fulfill our obligation under sections 1816(c) and 1842(c) of the Act, as amended by section 4035(a) of Public Law 100-203 to publish annually in the Federal Register, the data, standards, and methodology proposed to be used in establishing fiscal intermediary and carrier budgets. This information is to be published for public comment at least 90 days prior to the publication of the final data, standards, and methodology to be used. This proposed notice would not promulgate any rule or implement any policy, nor would it be a part of, or substitute for, any negotiations we intend to conduct with the intermediaries and carriers. The data, standards and methodology utilized to determine the FY 91 carrier and intermediary budgets have not been changed from those utilized to determine the FY 90 budgets. Any changes to the budget amounts would be the result of changes in the workload and the inflation factor as well as our negotiations with contractors rather than as a result of this notice. Thus, this document would not produce a change either in contractor operations or on program activities. In additon, this proposed notice would not affect provider or supplier reimbursement rates or fees.

For these reasons (than is, this proposed notice does not represent an attempt at rulemaking, and the publishing of this notice would not have a significant impact on any aspect of the Medicare program), this notice does not meet the $100 million criterion nor do we believe than it meets the other E.O. 12291 criteria. Therefore, this proposed notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

For these same reasons, we also have determined, and the Secretary certifies, that this proposed notice would not result in a significant impact on a substantial number of small entities and would not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

VI. Response to Comments

Because of the large number of pieces of correspondence we normally receive on a proposed notice we are not able to acknowledge or respond to them individually. We will consider all comments contained in correspondence that we receive by the date specified in the "DATE" section of this preamble and will respond to the comments in our final notice.

(Sec. 1816 and 1842 of the Social Security Act (42 U.S.C. 1395h and 1395u))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program: No. 13.774, Medicare-Supplementary Medical Insurance.)

Dated: July 23, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-25123 Filed 10-23-90; 8:45 am]

BILLING CODE 4120-01-M

[HSQ-182-NC]

Medicare Program; Standards Applied by Utilization and Quality Control Peer Review Organizations: Consideration of Remote Rural Location and Other Relevant Factors

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of policy and request for comments.

SUMMARY: This notice advises interested parties about HCFA's implementation, without change in existing regulations, of section 4094(a) of the Omnibus Budger Reconciliation Act of 1987 (Pub. L. 100-203), and it provides the opportunity for comment. Section 4094(a) of Public Law 100-203 directs Utilization and Quality Control Peer Review Organizations (PROs), when developing review standards and norms, to "take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patients's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis."

Since PROs are already supposed to take such factors into account when making medical review determinations, no change in existing regulations or policies is needed to ensure compliance with section 4094(a) of Public Law 100-203. We are, however, publishing this notice so that all interested parties will understand our current policies and have the opportunity to make their views known. Based on the comments we receive, we will reevaluate our current policies and, if necessary, further define those policies.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 24, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-182-NC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code HSQ-182-NC. Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Patricia Booth (301) 966-6860.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)) amended part B of title XI of the Social Security Act (the Act) to establish the Utilization and Quality Control Peer Review Organization (PRO) program. The 1982 legislation provided that PROs assume the responsibilities that previously had been assigned to Professional Standards Review Organizations and fiscal intermediaries. Those responsibilities include the review of health care services funded under Medicare (title XVIII of the Act), to ensure that services furnished to Medicare beneficiaries are medically necessary and provided in the most appropriate setting (for example, acute care hospital versus skilled nursing facility (SNF) or a lesser level of care) and meet professionally recognized standards of quality. Where

services are not medically necessary or not delivered in the most appropriate setting, PROs have the authority to deny payments. In addition, PROs monitor and validate a sample of diagnostic and procedural information supplied by hospitals to fiscal intermediaries to establish for individual cases the propsective payment amounts for hospitals.

Section 1154(a)(6)(A) of the Act requires that PROs "apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice within the geographic area served by the organization as principal points of evaluation and review, taking into consideration national norms where appropriate." Section 4094(a) of Public Law 100–203 amended this section of the Act by adding the requirement that PROs "shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis."

In developing their review criteria, PROs generally use nationally recognized criteria adapted to meet PRO review requirements and to reflect local norms of practice and standards of medical practice [42 CFR 466.100). Additionally, 42 CFR 466.98 requires that a PRO denial of payment must be based on review by a local peer (or practitioner as appropriate).

When a PRO proposes to deny a payment or identifies a potential quality problem, the PRO must also permit the affected physicians or providers an opportunity to discuss the issue and present evidence to refute the PRO's provisional findings [42 CFR 466.93 and 1004.50).

In 1985, HCFA issued a policy statement to all PROs through its regional offices about the consideration of location and other relevant factors that stated, in part:

> Factors which may result in an inconvenience to a patient or family do not, of themselves, justify hospital admission or continued stay. Where such factors, however, affect the patient's health, the PRO will consider them in determining whether inpatient hospitalization is appropriate.

HCFA has interpreted this policy to require that PROs consider factors that affect the patient's need for inpatient hospitalization (that is, medical, environmental, social, etc.). This would include whether services that, under normal circumstances, could be provided on an outpatient basis should be provided on an inpatient hospital basis because of factors that could affect the health and safety of the patient. Thus, consistent with the provisions of section 4049(a) of Public Law 100–203, we already have policies in place that require that PROs take into account location and the other relevant factors cited in the law in conjunction with medical necessity when making decisions about inpatient hospital admissions and continued stays.

HCFA does not require PROs to make special efforts to obtain information about these factors when they are not included in the medical record. If medical records do not contain any documentation to allow the application of the factors, it is incumbent upon either the attending physician or the hospital to present, as part of the "opportunity to discuss," this evidence for the PRO's consideration. (If the case was denied, the beneficiary would be able to present the evidence as part of his or her request for reconsideration.)

Regulations governing PRO Medicare review activities are located in various parts of title 42 of the CFR (that is, parts 405, 412, 462, 466, 473, 476, 489, and 1004).

II. Request for Comments

HCFA has not established specific standards for PROs to use when considering location and other factors in the review process. This approach permits PROs flexibility to apply these factors based on practice patterns within their geographic areas. (This same flexibility is mandated by the Act for medical review criteria.) PROs should base determinations on circumstances peculiar to the areas they service (for example, terrain, weather conditions) and based on their staff's knowledge, experience, and training. Even with general guidelines, because of the uniqueness of each PRO area in terms of local norms of practice, topography, etc., and the fact that for questioned cases a physician makes the determination without reliance on criteria, we would expect some degree of variation in application of the statutory provision.

We have received some criticism alleging that PROs are not uniformly recognizing the factors cited in the law when making determinations. Therefore, we are seeking public input on the following specific issues:

1. Applicability to Both Admission and Continued Stay Decisions

HCFA maintains that the plain reading of the statutory language is that this provision applies to both continued stay and admission determinations. Several hospital industry organizations have communicated to us their contention that congressional intent was to have the provision apply "only" to admission determinations. This interpretation would create irrational situations in which a patient ostensibly could have an admission covered, taking into consideration other relevant factors, but could not remain in the hospital because the same factors would not be considered. Without specific statutory language to support the latter position, we contend that our interpretation of the provision, applying it equally to admissions and continued stay determinations, is consistent with the statutory requirement.

2. Meaning of "Outpatient Basis"

Section 4094(a) of Public Law 100–203 discusses situations (for example, availability of proximate alternative sites of care) that could adversely affect the safety or effectiveness of treatment provided on an "outpatient basis." We believe that it was the intent of Congress to limit the consideration of the factors cited in the law to short-term medically necessary services and not to expand Medicare coverage beyond the traditional benefit package. For example, the PRO would not approve hospitalization for SNF, intermediate care facility (ICF) or home health care level services because of these other factors, but could approve a short-term hospitalization when determining whether a patient having a surgical procedure performed should be admitted to the hospital as an inpatient versus having the procedure performed in the hospital outpatient department or an ambulatory surgical center. We do not believe these factors alone justify inpatient hospital admissions or continued stays for nonsurgical patients who require a lesser level of care such as a skilled nursing facility level of care or skilled home health services.

3. Definition of "Other Appropriate Factors"

We have not defined "other appropriate factors," but have relied on PROs to make determinations based on circumstances peculiar to their service areas and/or the individual case being reviewed. We are seeking public input about factors such as the distance a patient would be expected to travel, recognizing that there are differences

from area to area (for example, mountains, unimproved roads).

(Sec. 1154(a)(6) of the Social Security Act (42 U.S.C. 1320c–4(a)(6)).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance)

Dated: July 11, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90–25124 Filed 10–23–90; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–90–3162]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act system of records: HUD/H–11, Multifamily Tenant Characteristics Data.

EFFECTIVE DATE: This amendment shall become effective without further notice on November 23, 1990, unless comments are received on or before that date which would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. Only public comments of six or fewer *total* pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will *not* be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708–2084). [These are not toll-free numbers.]

FOR FURTHER INFORMATION CONTACT: Donna L. Eden, Privacy Act Officer, Telephone Number (202) 708–0050. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: HUD/H–11 contains a record for each individual receiving housing assistance from HUD under one of the following programs: Section 8, Public/Indian Housing, Section 236 (including Section 236 RAP), Rent Supplement, Section 221 (d)3 BMIR, and Section 202/8. This amendment is being made to reflect the Department's intention to maintain and use records that will identify all individuals who underreported income which was discovered while conducting income computer matches. In addition this system of records is being amended to change the name of the system to better reflect program coverage.

The amended portion of the system notice is set forth below. Previously, the system and prefatory statement containing the general routine uses applicable to all of the Department's systems of records were published in the "Federal Register Privacy Act Issuances, 1987 Compilation, Volume II."

A report, as required by 5 U.S.C. 552(a) of the Privacy Act, has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Authority: United States Housing Act of 1937, as amended, 42 U.S.C. 1437 et seq., and the Housing and Community Development Amendments of 1981, Pub. L. 97–35, 95 Stat. 408.

Issued at Washington, DC October 18, 1990.

Michael F. Hill,

Acting Assistant Secretary for Administration.

HUD/H–11

SYSTEM NAME:

Multifamily Tenant Characteristics Data.

SYSTEM LOCATION:

Headquarters and Field Offices. For a listing of Field Offices with addresses, see 24 CFR part 16, Appendix A. Decentralized portions of this file may be maintained by selected contractors with research contracts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This file contains a record for each individual receiving housing assistance from HUD under the following programs: Section 8, Public/Indian Housing, Section 236 (including Section 236 RAP), Rent Supplement, Section 221(d)3 BMIR, and Section 202/8. The file also contains a record of unreported or underreported income discovered in conducting an income verification match.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated records consisting of: Identification information such as name; Social Security Number(s) (SSNs) for all individuals six (6) years of age and older; Alien Registration Information; address and tenant unit number; financial data such as income, contract rent amount; tenant characteristics such as number in family, sex of family member and minority code; unit characteristics such as number of bedrooms; geographic data such as county code and census tract; information used to verify data in the system; and information on the results of the follow-up phase of a computer match of tenant income verification (i.e., dollar amount of overpaid assistance, amount repaid, prosecution, and eviction).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

United States Housing Act of 1937; as amended, 42 U.S.C. 1437 et. seq., and the Housing and Community Development Amendments of 1981, Pub. L. 97–35, 95 Stat. 408.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See routine uses paragraph in prefatory statement. Other routine uses include:

1. Federal, State, and local agencies (e.g., State agencies administering the State's unemployment compensation law, Office of Personnel Management, United States Postal Service, Department of Defense, and Social Security Administration)—to verify the accuracy and completeness of the data provided, to verify eligibility or continued eligibility in HUD's rental assistance programs, and to detect tenant fraud and abuse in assisted housing through the Department's tenant income computer matching program;

2. HUD persons under contract to HUD or under contract to another agency with funds provided by HUD—for the performance of research and statistical activities directly related to

the management of HUD's rental assistance programs, to support a quality control for tenant eligibility efforts requiring a random sampling of tenant files to determine the extent of administrative errors in making rent calculations, eligibility determinations, etc., and for processing certifications/recertifications; and,

3. Social Security Administration and Immigration and Naturalization Service—to verify alien status and continued eligibility in HUD's rental assistance programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder; magnetic tape/disk/drum.

RETRIEVABILITY:

Name of tenant and all household members, address, SSN, or other identification number.

SAFEGUARDS:

File folders, automated records kept in a secured area. Access restricted to authorized individuals.

RETENTION AND DISPOSAL:

Obsolete records are destroyed or sent to a storage facility in accordance with HUD Handbook 2235.6, Records Disposition Management; HUD Records Schedules.

SYSTEM MANAGER AND ADDRESS:

For Section 8, Section 236 (including Section 236 RAP), Rent Supplement, Section 221(d)3 BMIR, and Section 202/8—

Office of the Assistant Secretary for Housing: Director, Housing Information and Statistics Division, Office of Management; Director, Planning and Procedures Division, Office of Multifamily Housing Management, Deputy Assistant Secretary for Multifamily Housing Programs.

For Public and Indian Housing—

Office of Assistant Secretary for Public and Indian Housing: Office of Public Housing, Chief, Occupancy Branch.

For Computer Matching Activities—

Office of Inspector General, Director, Program Integrity Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned appear in 24 CFR part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subject individuals, other individuals and organizations, Federal, State, and local agencies. PHA staff/private owners/management agents.

[FR Doc. 90-25055 Filed 10-23-90; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Nomination for National Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Indian Gaming Regulatory Act (25 U.S.C. 2701, *et seq.*) provides for appointment by the Secretary of the Interior of two associate members of the National Indian Gaming Commission after public notice and an opportunity for comment. Notice is hereby given of the proposed appointment of Joel Matthew Frank, Sr., as an associate member of the Commission.

DATES: Comments must received by: November 23, 1990.

ADDRESSES: Comments should be addressed to: Morris Simms, Director of Personnel, Department of the Interior, 849 C Street NW., Washington, DC 20240, (202) 208-6761.

SUPPLEMENTARY INFORMATION: Section 5(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2704(a)) establishes a three-member National Indian Gaming Commission within the Department of the Interior. The Act provides that the Chairman of the Commission is to be appointed by the President with the advice and consent of the Senate. The two associate members of the Commission are to be appointed by the Secretary of the Interior (25 U.S.C. 2704(b)(1)). The Act provides that the Secretary shall publish notice of nominations for the associate member positions in the **Federal Register** and provide an opportunity for public comment.

Notice is hereby given of the proposed appointment of the following individual to be an associate member of the Commission for a term of three (3) years:

Joel Matthew Frank, Sr. Mr. Frank is an enrolled member of the Seminole Tribe of Florida. Since March, 1982, he has been employed as Executive Administrator of the Seminole Tribe of Florida and is currently responsible for the overall management and administration of all operations of the Seminole Tribe. He previously was employed by the Seminole Tribe of Florida for approximately two years as the Assistant Health Director and prior to that as a Health Planner. Beginning in 1975, he served for approximately four years as the Health Administrator for the Miccosukee Tribe of Indians of Florida. He currently serves as the President, United South and Eastern Tribes, Inc., Vice Chairman of the National Indian Gaming Association, and Board Member of the Florida Governor's Council on Indian Affairs. He previously served as the Vice President and Secretary of the United South College and St. Thomas University in Miami, Florida.

Persons wishing to comment on this proposed appointment may submit written comments to the address identified above. Comments must be received within 30 days of the date of the publication of this notice.

Dated: October 17, 1990.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 90-25107 Filed 10-23-90; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[WY-040-01-4111-16]

Rock Springs District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Advisory Council.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Rock Springs District Advisory Council.

DATES: November 13, 1990, 9 a.m. until 4:30 p.m. and November 14, 1990, 8 a.m. until 12 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

November 13, 1990:

1. Tour of BLM public lands in the Green River Resource Area. Tour topics include: Coal Bed Methane Proposals; Proposed Bridger Mine Expansion; and the Natural Corrals ACEC.

November 14, 1990:

1. Introduction and opening remarks.
2. Review of minutes from last meeting.
3. Review of tour topics.
4. Minerals Program activities briefing: Coal Bed Methane Proposals; Oil and Gas Activities; and Trona Expansion Including Brine Proposals.
5. Green River Resource Area Resource Management Plan update.
6. Highway 28 Farson Fence update.
7. Big Piney/LaBarge Coordinated Activity Plan update.
8. Update of Cumberland Grazing Allotment Management Plan.
9. Wild Horse Program update.
10. FY 91 Budget update.
11. Public comment period.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 12 p.m. on November 14, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the preceding address by November 9, 1990. Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the District Manager.

Donald H. Sweep,

District Manager.

[FR Doc. 90-25063 Filed 10-23-90; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW72253]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

October 15, 1990.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW72253 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW72253 effective June 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 90-25064 Filed 10-23-90; 8:45 am]

BILLING CODE 4310-22-M

INTERNATIONAL TRADE COMMISSION

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: International Trade Commission.

ACTION: Scheduling of deadline for submissions in connection with the third followup report.

SUMMARY: The Commission has commenced work on the third in a series of followup reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, "The effects of Greater Economic Integration Within the European Community on the United States." The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (54 FR 51328), and notice of the procedure to be followed in followup reports was published in the **Federal Register** of September 20, 1989 (54 FR 38751).

The report on the initial phase of the investigation was sent to the Committees on Monday, July 17, 1989. The first followup report was sent to the Committees on Friday, March 30, 1990, and the second followup report was sent on September 28, 1990. Copies of either the initial report "The Effects of Greater Economic Integration Within the European Community on the United States" (Investigation 332-267, USITC Publication 2204, July 1989), the first followup reports (Investigation 332-267, USITC Publication 2266, March 1990), or the second followup report (Investigation 332-267, USITC Publication 2318, September 1990) may be obtained by calling 202-252-1809, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

The third followup report will be sent to the Committees on March 29, 1991.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: For further information on other than the legal aspects of the investigation contact Mr. John J. Gersic at 202-252-1342. For information on the legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the third followup report should be received by the close of business on January 11, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available

for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810

Issued: October 16, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–25106 Filed 10–23–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–462 (Final)]

Benzyl Paraben From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–462 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of benzyl p-hydroxybenzoate (benzyl paraben), provided for in subheading 2918.29.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before December 12, 1990 and the Commission will make its final injury determination by February 5, 1991 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Jeff Doidge, (202–252–1183), Office of Investigations, U.S International Trade Commission, 500 E Street SW., Washington. DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of benzyl paraben from Japan are being sold in the United States at less than fair value within the meaning of seciton 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 29, 1990, by ChemDesign Corp., Fitchburg, MA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that the establishment of an industry in the United States was being materially retarded by reason of imports of the subject merchandise (55 FR 34626, August 23, 1990).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commisison, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addreses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompnay the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that is has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 3, 1990, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rule (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 18, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 10, 1990. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 13, 1990, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is December 13, 1990. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due December 14, 1990. Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not

available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 24, 1990. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due December 26, 1990. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 24, 1990.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than December 31, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs. A nonbusiness proprietary version of such additional comments is due January 2, 1991.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

Issued: October 17, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-25105 Filed 10-23-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-313]

Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement; Spunbound Nonwoven Fabric and Fabric Made Therefrom

In the matter of certain process, apparatus, and components thereof, for the production of spunbound nonwoven fabric, and fabric made therefrom.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Reifenhauser GmbH & Co. Maschinenfabrik, Silver-Plastics GmbH & Co. KG, and Wayn-Tex, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 18, 1990.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202-252-1805.

Issued: October 18, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-25104 Filed 10-23-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Financial Docket No. 31738]

Dardanelle and Russellville Railroad; Acquisition Exemption, East Camden and Highland Southern Division

The Dardanelle & Russellville Railroad (D&R), a Class III railroad operating in Arkansas, has filed a notice of exemption to acquire a line of railroad from the East Camden & Highland Railroad Co. (EACH), also a Class III railroad. The involved line, EACH's Southern Division, extends between milepost L 99, near El Dorado, AR, and milepost L 125.2, near Lillie, LA, a distance of 26.2 miles.

D&R indicates that: (1) The properties operated by D&R and EACH will not connect with each other or with any other railroad in their corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or with any other railroad in their corporate family; and (3) the transaction does not involve a Class I carrier.

Therefore, this transaction involves the acquisition of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in "New York Dock

Ry.—Control—Brooklyn Eastern Dist.,"360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: James M. Moody, Jr., Wright, Lindsay & Jennings, 2200 Worthen Bank Building, 200 West Capitol Avenue, Little Rock, AR 72201.

Decided: October 15, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-25133 Filed 10-23-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31745]

Clyde S. and Saundra Forbes and CSF Acquisition, Inc., Control, Operation, and Acquisition Exemption, Washington County Railroad Corp.

Clyde S. and Saundra Forbes and CSF Acquisition, Inc. (CSF), (jointly, petitioners) have filed a notice of exemption to manage, operate, and ultimately purchase the properties of Washington County Railroad Corporation (Washington). CSF, a noncarrier, is under control of the Forbes, its only shareholders. Petitioners will manage Washington for a period of 150 days, with the option to renew management and operation for additional 1-year periods.[1] Washington, a class III shortline railroad, holds authority to operate a rail line between Montpelier Junction and Graniteville, VT, owned by the State of Vermont.

CSF and the Forbes own and operate two other class III shortline railroads, Florida West Coast Railroad Company and New Hampshire and Vermont Railroad Company. They also manage and have the right (as yet unexercised) to acquire stock control of Northern Vermont Corporation, a noncarrier holding company that owns 100 percent of the common stock of two other class III shortline railroads: Lamoille Valley Railroad Corporation and Twin State Railroad Corporation. These arrangements have all been exempted from prior Commission approval by exemption notices or an exemption decision of the Commission.[2]

Petitioners state that: (1) The properties they operate and control do not connect with each other; (2) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction involves the control of a nonconnecting carrier, and comes within the class exemption of 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in "New York Dock Ry.—Control—Brooklyn Eastern Dist.", 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street NW., suite 1107, Washington, DC 20006, and James S. Brock, Cheney, Brock & Saudek, P.C., P.O. Box 489, Montpelier, VT 05601.

Decided: October 11, 1990.

By the Commission, David M. Konschnick, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 25132 Filed 10-23-90; 8:45 am]

BILLING CODE 7035-01-M

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[1] Petitioners assert that the proposed management arrangement may not require the Commission's prior review and approval under 49 U.S.C. 11343, citing the decision in Finance Docket No. 30789, "Canonie Atlantic Co. and Canonie, Inc.—Exemption from 49 U.S.C. 10901, 11301, and 11343 (Canonie)" (not printed), served September 11, 1985, but that this notice invoking the class exemption was filed out of an abundance of caution. Petitioners' reliance on Canonie is misplaced. The petitioner in Canonie, at the time of management, was not involved in any other regulated activity. The words "control or management" as used in 49 U.S.C. 11343 embrace all types of control or management. Here, the fact that petitioners, theoretically at least, would be subject to the orders of Washington's board of directors does not negative possession by them of actual control within the meaning of the statute. See "Colletti—Control—Comet Freight Lines", 38 M.C.C. 95, 97–8 (1942).

[2] Finance Docket No. 31545, "Clyde S. and Saundra Forbes and CSF Acquisition, Inc.—Control Exemption—Lamoille Valley Railroad Company and Twin State Railroad Corporation" (not printed), decision served January 26, 1990, notice published January 29, 1990 (55 FR 2889), a petition for revocation and reconsideration is pending; Finance Docket No. 31546, "Clyde S. and Saundra Forbes and CSF Acquisition, Inc.—Continuance in Control Exemption—New Hampshire and Vermont Railroad Company" (not printed), notice served and published December 8, 1989 (54 FR 50660); and Finance Docket No. 31547, "New Hampshire and Vermont Railroad Company—Lease, Operation, and Acquisition Exemption—Boston and Maine Corporation" (not printed), notice served and published December 8, 1989 (54 FR 50660), a petition for revocation is pending.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; D & J Auto Sales, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 11, 1990 a proposed Consent Decree in *U.S.* v. *D & J Auto Sales, Inc.*, Civil Action No. 89-0044-H, was lodged with the United States District Court for the Western District of Virginia. The proposed Consent Decree involves claims against the defendant, a used car dealer, for allegedly knowingly tampering or causing tampering with catalytic converters on used cars in its sales inventory in violation of section 203(a)(3)(B) or the Clean Air Act, 42 U.S.C. 7522(a)(3)(B). The Decree requires defendant to pay a $5,000 civil penalty for past violations and not to violate the statute in the future.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *U.S.* v. *D & J Auto Sales, Inc.*, D.J. No. 90-5-2-1-1358.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Virginia, U.S. Attorney's Office, Room 456, Poff Federal Building, 210 Franklin Road SW., Roanoke, VA 24011 or the U.S. Environmental Protection Agency, Field Operations and Support Division, Eastern Field Office I (EN-397F), 401 M Street SW., Washington, DC 20460. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclosed a check in the amount of $1.50 (25 cents per page reproduction costs) payable to "Consent Decree Library."

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-25101 Filed 10-23-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Town and Country Auto Sales

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby

given that on October 11, 1990 a proposed Consent Decree in *U.S.* v. *William R. Johnson and Bonita M. Johnson d/b/a Town and Country Auto Sales,* Civil Action No. 89–0046–H, was lodged with the United States District Court for the Western District of Virginia. The proposed Consent Decree involves claims against the defendants, used car dealers, for allegedly knowingly tampering or causing tampering with catalytic converters on used cars in their sales inventory in violation of section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. 7522(a)(3)(B). The Decree requires the defendants to pay a $4,800 civil penalty for past violations and not to violate the statute in the future.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *U.S.* v. *William R. Johnson and Bonita M. Johnson d/b/a Town and Country Auto Sales,* D.J. No. 90–5–2–1–1360.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Virginia, U.S. Attorney's Office, room 456, Poff Federal Building, 210 Franklin Road SW., Roanoke, VA 24011 or the U.S. Environmental Protection Agency, Field Operations and Support Division, Eastern Field Office I (EN–397F), 401 M Street SW., Washington, DC 20460. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington DC 20004 202–347–7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $1.75 (25 cents per page reproduction costs) payable to "Consent Decree Library."

George Van Cleve,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 90–25102 Filed 10–23–90; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; E.H. Schilling & Son, General Contractors, et al.

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on October 11, 1990, a proposed consent decree in *United States* v. *E.H. Schilling & Son, General Contractors, Inc., et al.,* Civ. Act. No. C–1–90–705 was lodged with the United States District Court for the Southern District of Ohio. This action was brought pursuant to CERCLA for cleanup of the E.H. Schelling & Son Landfill ("Site") located in Hamilton Township, Lawrence County, Ohio, and for the recovery of costs expended by the United States in connection with the Site.

The consent decree is entered into between plaintiff, the United States, and four defendants: E.H. Schilling & Son, General Contractors, Inc., Aristech Chemical Corporation, The Dow Chemical Company, and Ashland Chemical, Inc. (collectively "Settling Defendants"). The Settling Defendants are among the parties potentially responsible for the contamination at the Site.

The Decree requires the Settling Defendants to finance, design, and perform a $9.4 million remedial action at the Site. Under the Decree, Settling Defendants shall, *inter alia:* (1) Install and maintain a fence around the Site; (2) install and operate a leachate collection and treatment system; (3) implement a groundwater monitoring program, and, if the groundwater monitoring reveals contamination in excess of certain action levels, install and operate a groundwater collection system; (4) improve the stability of the earthen dam to meet requisite safety levels; (5) design and install a multi-layer cap over the Site; and (6) install and design a perimeter wall to prevent groundwater from flowing into the Site.

The Decree also requires the Settling Defendants to pay all outstanding past response costs incurred by EPA. Further, the Settling Defendants have agreed to pay all of EPA's future oversight costs, except for the first $236,000 of such costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *E.H. Schilling & Son, General Contractors, Inc., et al.,* DJ Ref. #90–11–2–474.

The proposed consent decree may be examined at the office of the United States Attorney, room 200, United States Post Office and Courthouse Building, 5th & Walnut Streets, Cincinnati, Ohio, and at the Region V Office of the Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street suite 600, NW., Washington, DC 20004, Telephone Number (202) 347–2072. In requesting a copy, please enclose a check in the amount of $66 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–25103 Filed 10–23–90; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act; Puget Sound Power & Light Co., et al.; Correction

This is to correct the Notice which was published in the **Federal Register** on September 20, 1990, cited at Vol. 55, No. 183, pp. 38760–38761, *United States* v. *Puget Sound Power & Light Company et. al.*

This notice corrects the following errors:

In the first paragraph, the name of the case should appear as *United States* v. *Joseph Simon & Sons, et. al.* instead of *United States* v. *Puget Sound Power & Light Company, et al.* There are no other changes to this paragraph.

In the second paragraph, comments addressed to the Department of Justice should refer to *United States* v. *Joseph Simon & Sons, et. al.* instead of *United States* v. *Puget Sound Power & Light Company, et al.* There are no other changes to this paragraph.

In the third paragraph, the person to contact for examination of the proposed consent decree at Region X of the Environmental Protection Agency's Office of Regional Counsel has been added. The contact is Lynn M. Williams, Administrative Records Coordinator. There are no other changes to this paragraph.

The following new paragraph should be added as the last paragraph in this notice:

The Administrative Record may be examined at the Region X Office of the United States Environmental Protection Agency, Lynn M. Williams, Admininstrative Records Coordinator, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, WA 98101, and at the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Tacoma, Washington 98402.

Richard B. Stewart,

Assistant Attorney General.

[FR Doc. 90-25098 Filed 10-23-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Town of Southampton

In accordance with departmental policy as set forth in 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Town of Southampton*, Civil Action No. 90-3309, has been lodged with the United States District Court for the Eastern District of New York on September 24, 1990. The proposed consent decree requires the Town of Southampton to reimburse the United States for most of its past costs incurred at the North Sea Landfill Site, and to implement the remedy selected by the U.S. Environmental Protection Agency in its September 29, 1989 Record of Decision with respect to the first of three operable units at the Site.

The United States Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Town of Southampton*, DJ 90-11-3-557.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201, and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. A copy of the proposed consent decree can be obtained in person or by mail at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $15.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Environment and Natural Resources Division, Assistant Attorney General.

[FR Doc. 25100 Filed 10-23-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") on July 11, 1990 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing an additional area of planned activity and changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on January 17, 1985 (50 F.R. 2633). MCC and its shareholders filed additional notifications on March 29, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 18, 1988, September 19, 1989, January 16, 1990, March 7, 1990, and April 11, 1990. The Department published notices in the Federal Register in response to these additional notifications on April 23, 1985 (50 FR 15989); September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), April 9, 1990 (55 FR 13200), May 8, 1990 (55 FR 19114), and May 8, 1990 (55 FR 19114), respectively. On October 21, 1985, MCC filed an additional notification for which a Federal Register notice was not required.

MCC disclosed that it has established the Open System Satellite ("OSS") to its Packaging/Interconnect Technology program. OSS will conduct research in the area of multi-chip modules suitable for use in high performance work stations, personal computers, and high performance computers.

Effective April 25, 1990, and June 12, 1990, respectively, advanced Packaging Systems and Tandem Computers, Inc. became Associate Members of MCC and participants in OSS.

Effective June 6, 1990, Conner Peripherals, Inc. became an Associate Member of MCC and a participant in MCC's Optics Program.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-25099 Filed 10-23-90; 8:45 am]

BILLING CODE 4410-01-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 90-6]

Digital Audio Broadcast and Cable Services; Copyright Office Study

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office issues this Notice of Inquiry to inform the public that, responsive to a congressional request, it will examine the development of new digital audio broadcast and cable services and the effects implementation of such services may have or performers and copyright owners of copyrightable works under the Copyright Act of 1976, title 17 of the United States Code. The Office seeks public comment as to whether or not delivery of digital audio programming, transmitted by satellite systems, terrestrial systems, or by cable television systems, will affect copyright owners, and, if so, in what manner. In addition, should implementation new audio systems have negative effects on copyright owners for retransmissions of their works, the Office seeks proposals on the proper methods of compensating copyright owners while promoting the greatest availability of creative works to the public.

DATES: Initial comments should be received by no later than December 15, 1990. Reply comments should be received on or before January 31, 1991.

ADDRESSES: Interested persons should submit comments as follows: If sent by mail: United States Copyright Office, Library of Congress, Department 17, Washington, DC 20540. If delivered by hand: Office of the Register of Copyrights, Copyright Office, James

Madison Memorial Building, room 407, First and Independence Avenue SE., Washington, DC.

FOR ADDITIONAL INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707–8380.

SUPPLEMENTARY INFORMATION:

1. Background

The Copyright Office is aware that several organizations in the United States plan to introduce audio services that will provide listeners with digital quality programming delivered to them over cable lines. In addition, other companies have applied to the Federal Communications Commission ("FCC") for permission to use certain frequencies to broadcast digital programming to home and automobile radios via satellite. There has also been discussion of a worldwide digital satellite service. Several foreign countries have already designed, manufactured, and tested digital audio systems that deliver quality signals to listeners via satellite and terrestrial equipment.

Technological developments in digital audio transmission currently follow two paths. The first is digital audio broadcasting, which promises to be a replacement for current FM and AM radio. Digital audio broadcasting is an interference-free, compact disc-quality signal that can be delivered via terrestrial-based and satellite transmission systems. Interest in digital audio broadcasting was sparked by receipt at the FCC of three separate applications requesting frequency allocations and authorization to begin transmission in digital audio format. The applications, filed on May 18, May 22, and July 27, 1990, respectively, petition the Commission for a rulemaking to allocate spectrum, adopt rules for a terrestrial digital audio broadcasting system, and approve satellite carriage and sale of digital audio signals. In response to the applications, the FCC published a Notice of Inquiry seeking comment on the applications, and posing broader regulatory questions as to technical requirements. *See* FCC Docket No. 90–357 (August 21, 1990). Indications are, however, that a regulatory framework will not likely be in place before 1992, which is when the World Administrative Radio Conference is scheduled to consider setting aside frequencies for digital audio broadcasting.

The second development in digital audio services involves cable systems. In the United States three companies are already testing digital audio music services made available via cable, which does not involve the same spectrum allocation limitations that digital audio broadcasting does. Services to be offered to cable subscribers include packages of channels containing all-digital music recorded on compact discs and delivered to homes via a special tuner, as well as digital simulcast of the sound tracks of motion pictures and television shows. Because it does not require prior FCC authorization, digital cable radio will probably become widespread sooner than will digital audio broadcasting.

The Chairman of the Senate Subcommittee on Patents, Copyrights, and Trademarks, Senator Dennis DeConcini of Arizona, by letter of July 25, 1990, requested the Copyright Office to conduct a study "to determine how the rights of copyrights owners of sound recordings and performers are protected with respect to digital audio transmissions." The Senator requested that the study include "any recommendations as to any additional means that may be necessary to protect the rights of copyright owners."

By this Notice of Inquiry, the Copyright Office seeks and invites public comment to assist the Office in the preparation of this study.

2. Policy Questions for Addressing Copyright Interests Regarding Digital Audio Broadcasting

Although certain inquiries pending before the FCC focus on technical aspects of digital audio broadcasting, and legislation has been introduced addressing the issue of spectrum allocation, the Office's concern is that the rights and interests of those who own copyrights in works that may easily be transmitted and then copied in digital form should be balanced with the public's interest in enhanced technology and improved sound quality. These concerns bring to light often-aired debates about home taping, the introduction of digital audio taping equipment into the United States' consumer market, and the possible introduction of royalty payment systems.

The Office seeks general comments and specific proposals from interested parties about the state of the technology in the field of digital audio transmissions, the economic viability of proposed systems, and information about how copyright interests might be affected by the introduction of digital audio transmission services. Commenting parties are encouraged to include descriptions of methods for compensating copyright owners for copying of near-perfect reproductions of their works via regional, national, or international digital audio transmission systems. Comments are also invited regarding the impact of copyright controls and royalties on public access to new digital audio transmission services.

Specifically, the Office invites public comment or information regarding the following:

(1) Would introduction of digital audio broadcasting services prompt the average listener to copy copyrighted works? Would a listener be more likely to copy digitally transmitted works than works now broadcast on AM or FM radio frequencies, or on television? To what degree can a listener's home taping habits be monitored and what technical limitations on home taping are feasible?

(2) Would the copying of works transmitted via digital audio broadcasting services significantly displace sales of copyrighted works recorded on phonorecords, audio tapes, or compact discs?

(3) Would a copyright owner have the practical ability to negotiate with the owners/operators of digital audio services for compensation for transmission of his/her works? If not could representatives of copyright owners, such as performing rights organizations, accomplish this task?

(4) Should a royalty be placed on recording materials, such as blank tapes, or on digital recording equipment itself, to be distributed among copyright claimants? If so, who would be responsible for administering this process?

(5) Should digital audio broadcasters be forced to scramble their broadcasts so that listeners wishing to receive a signal containing copyrighted works would be forced to acquire special equipment, thereby becoming accountable for the possible copying of copyrighted works?

(6) Describe existing and contemplated digital audio transmission services, including a description of (a) encryption systems, if any; (b) the means of transmitting prerecorded digital signals; (c) any plans to compress the digital signals; and (d) any proposals concerning transmission of digital subcode information embodied on prerecorded works.

(7) Provide information relating to the business and commercial aspects of digital audio transmission services, including (a) the current number of subscribers and predictions of future growth for existing digital cable services; (b) the anticipated start-up

dates and predicted audience size of proposed digital cable and broadcast services; (c) a description of the music channel offerings—both existing and contemplated; (d) the availability of "pay-per-listen" services; and (e) copyright licensing arrangements, if any.

Ralph Oman,

Register of Copyrights.

[FR Doc. 90-25084 Filed 10-23-90; 8:45 am]

BILLING CODE 1410-07-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-87)]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATES: November 13, 1990, 8:30 a.m. to 5 p.m. and November 14, 1990, 8:30 a.m. to 2 p.m.

ADDRESSES: 600 Maryland Avenue SW., suite 236E, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code M-8, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. Laurence J. Adams and is composed of 15 members including individuals who also serve on other NASA advisory committees.

This meeting will be open to the public up to the seating capacity of the room (which is approximately 40 persons including committee members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Open.

Agenda

November 13, 1990—

8:30 a.m.—Chairman's Remarks
9 a.m.—Program Status
  Budget
  Congressional
  Preliminary Design Review
10:30 a.m.—Special Review Activities
  Synthesis Group
  Advisory Committee on the Future of the U.S. Space Program
11:30 a.m.—Discussion
1 p.m.—Level II Integration Function
2 p.m.—Discussion
3 p.m.—Solutions Team Follow-up
4 p.m.—Discussion
5 p.m.—Adjourn

November 14, 1990—

8:30 a.m.—Task Group on Verification
9:30 a.m.—Task Group on Orbital Debris
10 a.m.—Space Station Science and Applications Advisory Subcommittee (SSSAAS) Update
11 a.m.—Discussion
2 p.m.—Adjourn

Dated: October 17, 1990.

John W. Gaff,

Advisory Committee, Management Officer.

[FR Doc. 90-25094 Filed 10-23-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of hearing and site visits.

SUMMARY: In accordance with Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces the forthcoming meeting of the Commission.

DATE AND TIME: November 27, 1990—9 a.m.-5 p.m., November 28, 1990—9 a.m.-5 p.m.

PLACE: Hearing Site, Gold Room, Radisson Normandie Hotel, San Juan, Puerto Rico.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street NW., suite 815, (202) 254-5125.

AGENDA: Both days in the morning, the Commission will hear testimony regarding the HIV epidemic in the Commonwealth of Puerto Rico and in the afternoons the Commission will visit facilities providing services to people with HIV infection and AIDS throughout the Island.

Maureen Byrnes,

Executive Director.

[FR Doc. 90-25121 Filed 10-23-90; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Dated: October 18, 1990.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Date(s)	Times	Room *
Special Emphasis Panel in Cross-Disciplinary Activities	CISE Instrumentation Prop	11/07/90, 11/08/90	8:30 a.m. to 5 p.m. ..... 8:30 a.m. to 5 p.m.	414

* At 1800 G Street NW., Washington, DC

[FR Doc. 90-25059 Filed 10-23-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of license amendments revising the Technical Specifications for the Surry Power Station, Units 1 and 2, located in Surry County, Virginia. The proposed amendments change reactor coolant system pressure/temperature (P/T) limits and the power operated relief valve (PORV) setpoint for low temperature overpressure protection (LTOP).

Environmental Assessment

Identification of Proposed Action

The proposed amendments revise the reactor coolant system P/T limits based on evaluation of reactor vessel material properties expected for 15 effective full power years of operation (EFPY). The existing single P/T curve shown in Technical Specification Figure 3.1-1 is revised into two figures, representing P/T limits for heatup or cooldown, as appropriate. The amendments would limit the maximum plant heatup rate to 40°F/hr. The proposed amendments also revise the PORV setpoint for LTOP from 435 to 385 psig.

The Need for the Proposed Action

The existing P/T and LTOP specifications are based on a maximum of 11 EFPY. Facility operation beyond this point requires new P/T curves and LTOP limits representative of future operating conditions, reflecting changes in the reactor vessel material properties. The revisions provide operating limits to 15 EFPY. The revised P/T limits are also based on Regulatory Guide 1.99, Revision 2, and are consistent with guidance provided in Generic Letter 88-11.

Environmental Impacts of the Proposed Action

The proposed amendments affect power plant operating limits, but do not change the manner in which the facility is operated. Therefore, the proposed amendments do not increase normal radiological effluents, or add to occupational exposure. The proposed amendments do not change the generation or decay of isotopes present during normal operation. Therefore, possible post-accident radiological releases will not be more severe than previously determined. Furthermore, the amendments do not affect nonradiological effluents, so there is no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed amendments, any alternatives will either have equivalent or greater impact.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

The proposed amendments do not use resources in a manner other than that previously considered in the Final Environmental Statements dated May and June 1972 for Surry Units 1 and 2, respectively.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Commission has therefore determined not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see the application for amendments dated January 29, 1988, as supplemented February 20, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 19th day of October 1990.

For the Nuclear Regulatory Commission.

Jan A. Norris,

Acting Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-25114 Filed 10-23-90; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Safety Research Review Committee; Meeting

In accordance with the requirements of the Federal Advisory Committee Act (FACA), the Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on November 8 and 9, 1990. The meeting will be held at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland. The meeting will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to prepare a report providing NSRRC advice on what the strategy and content should be for a research program designed to meet NRC's essential regulatory requirements. This topic was the subject of detailed presentations made by the NRC staff at the previous NSRRC meeting on September 25 and 26.

Thursday, November 8, 1990

8 a.m.–5 p.m.: Prepare a working agenda for November 8 and 9, 1990. Review the status of Subcommittee information gathered from non-public meetings and direct inquiries. Deliberate on advice to be given to the NRC in a Committee report. Begin drafting the text of that report.

Friday, November 9, 1990

8 a.m.–4:30 p.m.: Continue activities initiated on Thursday, November 8, 1990.

4:30 p.m.: Adjourn.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee Chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the meeting, and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Inquiries regarding this notice, any subsequent changes in the status of the meeting, the filing of written statements, requests to speak at the meeting, or the transcription, may be made to the Designated Federal Officer, Dr. Ralph O. Meyer (telephone: 301/492-3904), between 8:15 a.m. and 5 p.m.

Dated at Rockville, Maryland, this 18th day of October, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-25117 Filed 10-23-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co. (H. B. Robinson Steam Electric Plant, Unit No. 2); Exemption

I

The Carolina Power & Light Company (CP&L or the licensee) is the holder of Facility Operating License No. DPR-23 that authorizes operation of the H. B. Robinson Steam Electric Plant, Unit No. 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility is a single-unit pressurized water reactor at the licensee's site located in Darlington County, South Carolina.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and appendix R became effective on February 17, 1981. Section III of appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.G.2 is the subject of the licensee's exemption request.

To achieve and maintain safe shutdown using one train of component cooling water (CCW) cables and equipment, section III.G.2.b of appendix R requires that:

> Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feeet with no intervening combustible or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area * * *.

By letter dated July 30, 1990, as supplemented August 16, 1990, CP&L requested approval of an exemption from the above requirements of section III.G.2 for the CCW pump room. In specific, the requested exemption related to the "no intervening combustible" provision of section III.G.2.b.

III

By letter dated July 30, 1990, as supplemented August 16, 1990 the licensee requested approval of an exemption from the technical requirements of section III.G.2 of appendix R to 10 CFR part 50 for the CCW pump room. The requested exemption would allow for an increase in the quantity of intervening combustibles between redundant trains to a combined quantity that will not exceed a 1-hour fire loading. Previously, an exemption to appendix R section III.G.2 for the CCW pump room was granted on October 25, 1984. In part, that exemption allowed a combined quantity of intervening combustibles or fire hazards between redundant shutdown trains for a fire loading of 16 minutes.

The licensee plans to install new cable trays in the CCW pump room. Cable installed in these trays will be qualified to IEEE-383, Vertical Flame Test. The requested exemption would allow an increase in the quantity of intervening combustibles between redundant trains as well as an increase in the overall combustible loading in the area. Through existing design and administrative controls, CP&L has committed that the in-situ combustible fire severity in the area will not exceed a 1-hour fire loading.

The licensee has provided information on the level of fire protection already provided. These provisions include:

1. An early warning redundant cross-zoned fire detection system is provided;
2. A partial fire suppression sprinkler system is installed above all cable trays (including the presently proposed cable trays) and pumps;
3. No other combustible materials are in the CCW pump room except for one quart of lubricating oil with a high flashpoint (350°F) for each of the three pumps;
4. A portable fire extinguisher is in the CCW pump room, and additional fire extinguishers and manual fire hose stations are in adjacent areas;
5. Power cables to the redundant CCW pumps are installed in conduits with a 1-hour fire barrier wrap. All other cables are coated with flame retarded material or are IEEE-383, Vertical Flame Test, qualified. All cable trays (including the proposed cable trays) are qualified to IEEE 383.

Based on our review of the above information, the staff concludes that the licensee's existing fire protection configuration provides an equivalent level of safety to that achieved by compliance with appendix R to 10 CFR part 50.

Therefore, the Commission has determined that the exemption from section III.G.2.b of appendix R to 10 CFR part 50 in the CCW pump room should be granted.

IV

Pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption unless special circumstances are present. Item (ii) of the subject regulation includes special circumstances where application of the subject regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of section III.G is to provide adequate protection of redundant components of safety-related equipment by limiting damage in the event of a fire at one safety-related component location so that the performance of the other safety-related component is not affected. The licensee has established that the substantial fire protection measures described in the licensee's July 30, 1990 submittal ensure that the configuration will not present an undue risk to public health and safety pursuant to 10 CFR 50.12(a)(1).

As described in the evaluation section of the exemption, the staff has concluded that the existing fire protection systems provide equivalent fire protection to that which would be provided by meeting the literal requirements of section III.G.2.b of appendix R. Therefore, the staff concludes that "special circumstances" exist for the licensee's requested exemption in that imposition of the literal requirements of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of appendix R to 10 CFR part 50.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are present in that the current level of fire protection satisfies the underlying sections of appendix R to 10 CFR part 50. Further, the staff has concluded that the requested exemption is authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of section III.G.2.b of appendix R to 10 CFR part 50 for the CCW pump room as described in section II above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (55 FR 41619).

For further details with respect to this section, see the licensee's request for exemption dated July 30, 1990, as

supplemented August 16, 1990, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 17th day of October 1990.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–25112 Filed 10–23–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licence No. NPF–47, issued to Gulf States Utilities Company (GSU) (the licensee), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

In letters dated August 22, 1990, and October 17, 1990, GSU proposed an amendment which would permanently disable the steam condensing mode (SCM) of the residual heat removal (RHR) system. The August 22, 1990, submittal was previously noticed on September 19, 1990 (55 FR 38602), and described GSU's plans to weld plugs in the steam supply lines. Due to the exposure rates predicted using this method, GSU provided supplemental information in a letter dated October 17, 1990, which described the removal of the two steam supply line valves in the auxiliary building and installation of a blind flange in place of each. The two methods accomplish the same purpose, closing off the steam lines, but the latter will result in lower worker exposures. The TS modifications originally proposed remain unchanged.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided a revised analysis that addressed the above three standards with regard to the addition of the blank flanges. The analysis addressing the rest of the proposed amendment remains unchanged, but is repeated for completeness.

1. The proposed change would not significantly increase the probability or consequences of an accident because the only accident is the high energy line break (HELB) in the steam tunnel and auxiliary building. Valves 1E12* VF052MO A and B will be replaced by blind flanges in the steam supply lines to the RHR heat exchangers. With the proposed location of the blind flanges, a HELB in the auxiliary building due to the rupture of steam line to the RHR heat exchangers is unchanged from originally contained in the SAR. The HELB of the steam lines in the steam tunnel and of the RCIC [Reactor Coolant Isolation Cooling] steam supply line in the auxiliary building have also been previously evaluated and this analysis is not affected.

The HELB of the steam supply line is determined by the closure of the containment isolation valves 1E51* MOVF 063 and 064. This modification does not affect the operability of these valves or associated instrumentation. GSU has re-evaluated the setpoint of the RHR/RCIC steam line flow-high isolation instrumentation and concluded that the exiting setpoint is adequate. This conclusion is based upon the mass and energy release calculations for steam line breaks in the steam tunnel and auxiliary building. Calculations indicate that for a break of the 4" RCIC steam supply line in the auxiliary building, the existing trip setpoint would be exceeded within 0.1 seconds after the break and that flow would be terminated by closure of the containment isolation valves within 12 seconds. Lowering the existing setpont would not significantly increase the response time of the containment isolation valves or decrease the inventory lost through the break. All equipment in the area is qualified based on the existing setpoint and calculated inventory loss. No increase in offsite release rates in excess of those previously would occur as a result of maintaining the existing setpoint. Based on the above, GSU concludes that the current setpont of 60.7 inches H_2O is adequate and should become the permanent setpoint.

The blind flanges will be fabricated and installed to the same quality requirements as the original piping. Also the steam line piping supports were reviewed for the decrease weight and will be modified to ensure the seismic adequacy of the line. The blank flanges have been located so as to ensure that piping designed for steam service remains drained.

Valves 1E12*MOVFO52A, 1E12*MOVFO52B, and 1E12*MOVFO26A were identified in the Fire Hazards Analysis as valves that must not spuriously reposition during a fire event. To ensure that these valves could be placed in the correct position during a fire event, control switches for these valves were included on the remote shutdown panel. Spurious repositioning of 1E12*MOVFO52A or B could result in an interfacing system LOCA [Loss of Coolant Accident] (Wash 1400, Event V). Spurious repositioning of 1E12*MOVFO26A could result in an overpressurization of the RCIC pump suction piping. With the implementation of this modification, the above events are no longer possible. The blind flanges in the RHR steam supply lines remove the possibiity of the interfacing system LOCA. Electrically disabling 1E12*MOVFO26A ensures that the valve cannot spuriously open during a fire event.

A review of the transient analyses (chapter 15 of SAR [Safety Analysis Report]) indicates that no credit has been taken for the SCM, including the radiological consequences of an MSIV [Main Steam Isolation Valve] isolation event as analyzed in [the] SAR. Section 15.2.4.2 did not take credit for SCM of RHR. Therefore, the elimination of this mode of operation will not affect the radiological consequences as reported in the SAR section 15.2.4.5 for the MSIV isolation event.

The only analysis which may be impacted by the permanent disabling of SCM is the number of main steam SRV [Safety/Relief Valve] cycles following an MSIV isolation. The SRV cycle analysis has been performed assuming that the SCM is unavailable. The value obtained is not greater than the current value of 15 used in section A.6A.9 of the SAR.

It is, therefore, concluded that this modification does not involve a significant increase in the probability or consequence of an accident.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because the design, fabrication and installation of the blind flanges will be the same requirements as the original piping (ASME III, Div. I). The blind flanges have been located so as to ensure that piping designed for steam service does not fill with water. Measures have been taken to ensure that the piping designed for steam service remains drained. No new or different relationships or interfaces with other systems or components have been created which could result in a new or different type of accident.

3. The proposed change would not involve a significant reduction in the margin of safety because there are no Technical Specification requirements for the SCM or RHR to be operable. Also, this mode is not a requirement for any other system required to be operable per the Technical Specifications.

Technical Specification section 3/4.3.2, "Isolation Actuation Instrumentation," specified that the RHR/RCIC steam line flow-high trip setpoint be less than or equal to 60.7 inches of water. This setpoint has been evaluated based on an RCIC steam supply line break maximum flow with the SMC or RHR disabled. A review of the mass and energy release calculations for a break of the 4" RCIC steam supply line in the auxiliary building indicates that the containment isolation valves would perform their function within the same time frame as previously analyzed. There would be no increase in offsite release rates. Environmental conditions in the RCIC steam line areas are not affected.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is disussed below.

By November 23, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted: In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully on the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to James C. Linville: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 17, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 18th day of October 1990.

For the Nuclear Regulatory Commission.

James C. Linville,

Acting Director, Project Directorate IV–2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–25113 Filed 10–23–90; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kennety A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Form N–8B–3
File No. 270–179
Form N–8B–4
File No. 270–180
Rule 30d–1
File No. 270–21

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Forms N–8B–3 and N–8B–4 and Rule 30d–1, all under the Investment Company Act of 1940.

Forms N–8B–3 is used by unincorporated management investment companies currently issuing periodic payment plan certificates to register under the Investment Company Act of 1940. Form N–8B–4 is used by face amount certificate companies to register under that act. Each requires approximately 170 hours of reporting per respondent, annually.

Rule 30d–1 prescribes the minimum content of reports to shareholders that management investment companies must send at least semi-annually. The rule requires approximately 600 hours, annually, per respondent.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Projects 3235–0166 [Form N–8B–3], 3235–0247 [Form N–8B–4], and 3235–0025 [Rule 30d–1], room 3208 NEOB, Washington, DC 20503.

Dated: October 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25144 Filed 10–23–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28551; File No. 600–20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Filing of Request for Extension of Temporary Registration as Clearing Agency

Notice is hereby given that on October 16, 1990, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"), a request for extension of its registration as a clearing agency under section 17A of the Act for a period of one year.[1]

On May 12, 1989, the Commission granted the application of ISCC to become registered as a clearing agency pursuant to sections 17A and 19(a) of the Act, and rule 17Ab2–1(c) thereunder, for a period of eighteen months. At that time, the Commission granted ISCC an exemption from compliance with section 17A(b) (3)(C) of the Act.

ISCC provides clearance and settlement services to its members and to foreign financial institutions primarily by providing links that enable market participants to process and settle their international securities transactions through the facilities of centralized clearing entities in the United States and abroad. The Commission is publishing this notice of a request for an extension of that registration for a period of one year to solicit comment from interested persons.

[1] *See* letter from Karen L. Saperstein, Associate General Counsel, ISCC, to Brandon Becker, Associate Director, dated October 16, 1990.

Interested persons are invited to submit written data, views and arguments concerning the foregoing within thirty days of the date of publication of this notice in the Federal Register. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the application and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All submissions should refer to file number 600–20 and should be submitted by November 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25145 Filed 10–23–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28543; File No. SR–NASD–90–52]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Small Order Execution System Tier Size Classifications

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 4, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as "a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under section 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing an interpretation of an existing rule pertaining to the Association's periodic reclassification of securities in the appropriate Small Order Execution System ("SOES") maximum order size tiers, as described more fully below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to notify the Commission of the reclassification of some 450 National Market System securities within the maximum SOES order size tier levels. The Association reviews the tier levels applicable to each security periodically (approximately every six months) to determine if the trading characteristics of the issue have changed so as to warrant a SOES tier level move. Such a review was conducted as of June 29, 1990, using second quarter, 1990 trading data and the established criteria:

A 1,000-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers;

A 500-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers;

A 200-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers.

The 450 NASDAQ/NMS securities that have been reclassified as of October 15, 1990, are set out in an exhibit to the filing.

Notice to Members 90–67

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other thaings, that the rulemaking initiatives of the NASD be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market." The NASD believes that the reassessment of securities within SOES tier levels will further these ends by providing an efficient mechanism to facilitate small order executions in the NASDAQ market.

B. Self-Regulatory Organization's Statement on Burden of Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The following rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Securities Exchange Act rule 19b–4 because the proposal has been filed as "a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule." At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission

and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 16, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-25146 Filed 10-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28554; File No. SR-NASD-90-35]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Articles II and III of the NASD Code of Procedure

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 13, 1990, and amended on September 24, 1990,[1] to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] to amend Articles II and III of the NASD Code of Procedure ("Code"). The proposed rule change makes two substantive changes to the Code: (1) NASD National Business Conduct Committee ("NBCC") hearing panels will consist exclusively of current or former Governors associated with members; [3] and (2) decisions of the NBCC will be final decisions of the NASD, unless the Board, at the request of one or more Governors, calls for review of specific NBCC decisions.

Notice of the proposal, together with the substance of the terms of the proposed rule change, was given by the issuance of a Commission release (Securities Exchange Act Release No. 28405, August 31, 1990) and by publication in the **Federal Register** (55 FR 37787, September 13, 1990). No comments were received on the proposal.

This proposed rule change will amend article III, section 2(d) of the Code to eliminate the requirement that a current Governor serve on every hearing panel. The proposal allows hearing panels to consist of current or former Governors associated with members, thereby permitting hearing panels to be composed exclusively of recent former industry Governors.

The proposal will also amend article III, sections 6 and 7 in that the decisions of the NBCC will no longer require action by the full Board to be effective. The proposal provides that the decisions of the NBCC are the final decisions of the NASD in disciplinary cases, unless the Board calls for review on the request of one or more Governors.

In addition, the proposed rule change amends relevant sections of articles I, II, III, IV and X of the Code of Procedure to reflect and conform with the changes discussed above.[4] The proposed rule also amends article IX of the Code of Procedure regarding procedures on grievances concerning automated systems to allow the NASDAQ Hearing Review Committee to review subject decisions. Determinations of the NASDAQ Hearing Committee may be reviewed at the Board's discretion upon the request of one or more Governors.

The NASD believes the proposed rule change is necessary in order to improve the disciplinary process and to reduce the burden that this process imposes on the NBCC and the Board. Prior to approval of this rule the NBCC would normally appoint a Governor serving on the NBCC and a recent former Governor as a hearing panel. The allocation of time required of Governors serving on the NBCC to hearing panels was increasing to a level that could detract from the ability of the Governors to effectively address regulatory policy issues. The NASD found the increasing workload of the NBCC could be viewed as limiting the opportunity of members of the NBCC to participate on other committees and in the increasingly demanding work of the Board itself.[5] In addition, the NASD believes that by limiting the Board's review of NBCC decisions to occasions when one or more Governors believe such review is appropriate will limit the time commitment required from Governors, yet not reduce the fairness of the NASD disciplinary process.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.[6] However, it is noted that the Division is concerned that the rule change does not provide a time frame in which the Board must determine whether it will review a decision of the NBCC. After this issue is examined by the Board in January 1991, the Division expects to be informed and will carefully consider the NASD's resolution regarding the necessity of determining a time period in which the board must decide if they are going to review NBCC decisions.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, SR-NASD-90-35, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-25147 Filed 10-23-90; 8:45 am]

BILLING CODE 8010-01-M

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[1] Amendment No. 1 indicated that, in response to concerns raised by the Division of Market Regulation ("Division") the NASD will bring before the NASD Board of Governors at the January 1991 NASD Board Meeting the issue of whether a time period should be adopted in which the Board of Governors must decide whether or not to review NBCC decisions. The amendment also stated the Commission will be able to determine if decisions from the NASD NBCC are final or pending final review by the Board of Governors because the SEC will not receive any decision that is not final. In addition, a technical amendment was made to art. II, sec. 12 which added the word "either" before the words "is of the opinion that." This change was approved prior to the receipt of the amendment and is reflected in the notice published in the **Federal Register**. *See* the letter from Suzanne E. Rothwell to Katherine England, dated September 24, 1990.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] Article III, sec. 2(c) of the Code requires that (unless otherwise consented to by the parties) every member of a hearing panel must be currently associated with a member of the NASD. The proposed amendments would not alter this requirement.

[4] The NASD in this proposed rule change is amending art. I, sec. 2 of the Code of Procedure (which defines terms used in the Code) by adding definitions of "Extended Proceeding" and "Extended Proceeding Committee" to conform to the definitional changes made to art. III, sec. 2 that were previously approved in SR-NASD-89-49. Also, minor language changes are being proposed to secs. 2(c), (e) and (f) of the Code of Procedure to clarify that the NBCC review will include written briefs, if submitted.

[5] The NASD also stated that the increased burden on the NBCC service could discourage valuable prospective industry and public candidates from serving on the Board.

[6] Specifically, the proposed rule change is consistent with the provisions of secs. 15A(b)(8) of the Act, which requires that "(t)he rules of the association [NASD] are in accordance with the provisions of subsection (h) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof."

[Rel. No. 34-28553; File No. SR-NYSE-90-41]

Self-Regulatory Organization; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to Rule 80A (Limitations on Trading During Significant Market Declines)

On September 19, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change which will exempt from rule 80A any index arbitrage market-at-the-close ("MOC") orders to liquidate stock positions previously established in relation to derivative index products entered on the last business day prior to expiration or settlement of such derivative products ("expiration Fridays").

The Exchange's proposal was approved on a temporary basis for the most recent expiration Friday, September 21, 1990, in order to allow for the ordely unwinding of previously established arbitrage positions in the event that rule 80A was triggered on that day. The proposed rule change was noticed for comment in Securities Exchange Act Release No. 28454 (September 20, 1990), 55 FR 40029 (October 1, 1990). No comments have been received on the proposal.

The purpose of the proposed rule change is to clarify the stabilization requirements of rule 80A as they apply to orders to liquidate stock positions established in relation to index options or futures contracts entered on expiration Fridays. Under paragraphs (c) and (d) of rule 80A, when the Dow Jones Industrial Average ("DJIA") advances or declines by 50 points or more from its previous trading day's closing value, all index arbitrage orders, as defined in rule 80A, to buy or sell any of the component stocks of the Standard & Poor's 500 Stock Price Index ("S&P 500 Index") must be entered with the instruction "buy minus" (in the event of a 50 point advance in the DJIA) or "sell plus" (in the event of a 50 point decline in the DJIA).[3] The requirements remain in effect for the remainder of the trading day, unless the DJIA moves to within 25 points of its previous day's close, when the restrictions are removed. They are reinstated if the DJIA again moves 50 points or more away from the previous day's close. The purpose of the "buy minus"-"sell plus" requirements for index arbitrage orders is to promote market stabilization by minimizing excess volatility during periods of significant market movement.

The Exchange proposes to add paragraph (g) to rule 80A to specify that on provisions of paragraphs (c) and (d) of rule 80A will not apply on expiration Fridays to index arbitrage MOC orders to liquidate previously established stock positions.[4] The Exchange believes that this provision will not adversely affect market stability because the order entry and imbalance publication procedures utilized by the Exchange on expiration Fridays foster market stabilization in what are usually the most actively traded stocks. Under the order entry and imbalance publication procedures, MOC orders relating to index derivative products in the 50 highest capitalized stocks in the S&P 500 Index, and any component stocks of the Major Market Index not included in this group of 50, must be entered by 3 p.m. Eastern Time. This allows for publication of order imbalances in these stocks to be made at times subsequent to 3 p.m. to attract orders on the opposite side of an imbalance. The only MOC orders in such stocks which may be entered after 3 p.m. are orders which offset a published imbalance. However, the procedures do not permit the liquidation of positions relating to a strategy involving stock index futures, stock index options, or options on stock index futures using MOC orders entered after 3 p.m., even if such orders might offset reported imbalances. The NYSE represents that, in general, these procedures have been helpful in maintaining market equilibrium on expiration Fridays.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, section 6.[5] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. As the Commission stated in approving the proposal on a temporary basis for Friday, September 21, 1990, the Commission believes that the market stabilizing effects of the NYSE's closing procedures on expiration Fridays should help to counteract the impact of the unwinding of previously established arbitrage positions.[6] For this reason, the Commission believes that the proposed rule change will not vitiate the effectiveness of rule 80A, and will allow for the orderly liquidation of index arbitrage positions in the event that rule 80A is triggered. Without the rule, market participants could be forced to maintain the stock side of an arbitrage in the event that rule 80A is triggered on an expiration Friday and the last transaction of the day is not on the requisite tick for selling or buying stock to liquidate the arbitrage position. The Commission believes that it is reasonable for the NYSE in its marketplace judgment to make an exception to rule 80A to ensure that market participants can liquidate a stock position on expiration Fridays.

The Commission finds good cause for approving the proposal prior to the thirtieth day of publication of notice of filing thereof in the Federal Register. The Commission believes that it is appropriate to approve the proposal on an accelerated basis in order to permit investors to unwind previously established index arbitrage positions without the risk of market exposure should Exchange rule 80A be triggered on Friday, October 19, 1990. In addition, the Commission has not received any comments on the proposed rule change, although the proposal was in effect on a temporary basis on Friday, September 21, 1990, and notice of the proposal appeared in the Federal Register on October 1, 1990. Because there have been no adverse comments to date concerning the proposal and because of the importance of maintaining the stability of the NYSE's markets, the Commission believes good cause exists to approve the proposed rule change on an accelerated basis.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] "Sell plus" means that the order only can be executed on a plus or zerio plus tick. A plus tick is a price above the price of the last preceding sale. A zero plus tick is a price equal to the last sale if the last preceding transaction at a different price was at a lower price. Conversely, a "buy minus" order can only be executed on a minus or zero minus tick. A minus tick is a price below the price of the last preceding sale. A zero minus tick is a price equal to the last sale if the last preceding transaction at a different price was at a higher price.

[4] The Commission approved the provisions of paragraphs (c) and (d) of Exchange rule 80A as a pilot program to run until July 31, 1991. *See* Securities Exchange Act Release No. 28282 (July 30, 1990), 55 FR 31468 (August 2, 1990) (order approving File Nos. SR-NYSE-90-5 and SR-NYSE-90-11).

[5] 15 U.S.C. 78f (1984).

[6] *See* Securities Exchange Act Release No. 28454 (September 20, 1990), 55 FR 40029 (File No. SR-NYSE-90-41).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–90–41) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: October 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25148 Filed 10–23–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28552; File No. SR–PTC–90–04]

Self-Regulatory Organizations; Participants Trust Co.; Filing of Proposed Rule Change Relating to the Rebate of Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 3, 1990, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR–PTC–90–04) as described in Items I, II, and III below, which items have been prepared by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PTC proposes to adopt a policy with respect to the rebate of fees. Below is the text of this proposed rule change:

The Board of Directors of Participants Trust Company may decide from time to time to return revenues received from its Participants, Limited Purpose Participants or participants of any other category of participant to those participants based upon such considerations as the Board of Directors deems relevant, including projected earnings of PTC in the event of the return of revenues or in the absence thereof, the projected financial needs of PTC and the desirability of paying dividends on PTC's outstanding capital stock.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In filing with the Commission, PTC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to confirm PTC's policy with respect to the rebate of fees to its participants. Since PTC cannot predict the volume of its business, it may, during periods of higher than anticipated activity or for other reasons, have revenues in excess of its needs; the Board of Directors may decide it is appropriate to return those excess revenues to participants.

The basis for the proposed rule change under the Act is the requirement under section 17A(b)(3)(D) that the rules of a clearing agency provide for the equitable allocation of dues, fees and other charges among its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PTC consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

PTC has requested accelerated effectiveness of this proposed rule change. PTC has expressed its belief that there is good cause for the Commission to approve this proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in that the proposed rule change confirms PTC's policy adopted at the time of its organization and accelerated approval would enable PTC to implement this policy within the calendar year 1990.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR PTC–90–04 and should be submitted by November 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25149 Filed 10–23–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17807; 812–7567]

The Baupost Fund, et al.; Application

October 17, 1990.

AGENCY: Securities & Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The Baupost Fund ("Fund"); Baupost Limited Partnership 1985 E–1 ("Partnership"); The Baupost Group, Inc. ("Baupost"); Seth A. Klarman ("Klarman"); Howard H. Stevenson ("Stevenson"); and William J. Poorvu ("Poorvu").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 17(b) from Section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to permit a proposed

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[7] 15 U.S.C. 78s(b) (1982).

[8] 17 CFR 200.30–3(a)(12) (1989).

reorganization between the Partnership and the Fund. The Partnership will transfer all of its assets and liabilities to the Fund in exchange for shares of the Fund, which will then be distributed to the partners of the Partnership.

FILING DATE: The application was filed on July 26, 1990 and amended on October 5, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1990, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o The Baupost Group, Inc., 44 Brattle Street, Cambridge, Massachusetts 02138.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicants' Representations

1. The Fund is a Massachusetts business trust, organized on June 29, 1990, that is registered under the 1940 Act as an open-end non-diversified management investment company. Baupost will serve as the investment adviser of the Fund. Klarman and Stevenson are trustees of the Fund, managing directors of Baupost, and officers of both entities. Poorvu is chairman of the Fund's board of trustees and Baupost's board of directors.

2. The Partnership was formed in 1985 as a limited partnership under the laws of Massachusetts. The Partnership is a private investment partnership that has not been registered under the 1940 Act in reliance on section 3(c)(1) of the 1940 Act and the interests therein have not been registered under the Securities Act of 1933 (the "1933 Act") in reliance on section 4(2) o the 1933 Act. Baupost is the managing general partner of the Partnership and has exclusive control of the business of the Partnership. Klarman and Stevenson are also general partners of the Partnership. The general partners have maintained an investment in the Partnership equal to not less than 1% of the net assets of the Partnership, and are allocated net income, gains and losses of the Partnership in proportion to their investment.

3. Applicants propose that, after the effective date of the Fund's N–1A registration statement, the Fund acquire all of the assets and assume all of the liabilities of the Partnership in exchange for shares of the Fund equal in value to the net asset value of the Partnership (the "Exchange"). Thereafter, the Partnership will dissolve and distribute the shares received from the Fund pro rata to its partners (including Baupost, Klarman, and Stevenson as general partners). Upon completion of the Exchange, the partners of the Partnership will hold all of the shares of the Fund, except for shares representing seed capital contributed to the Fund by Poorvu pursuant to section 14(a) of the 1940 Act.

4. The Exchange has been proposed primarily to permit limited partners of the Partnership to pursue, as shareholders of the Fund, similar investment objectives and policies in a potentially larger pool of assets. The Partnership was not registered as an investment company under the 1940 Act in reliance on an exception to the definition of "investment company" that prohibits the Partnership's securities from being owned by more than 100 persons. The Fund, by contrast, as a registered investment company, is not subject to any limitation on the number of shareholders.

5. There is no present intention to solicit widespread interest in the Fund. The Fund will be made available primarily to existing clients of Baupost and their families. The Fund will not enlist the assistance of an outside broker-dealer to market its shares and there is no intention to advertise the fund in newspapers or other media.

6. For the foreseeable future after the Exchange is accomplished, Baupost intends to manage the Fund in substantially the same manner as it previously managed the Partnership, except as may be necessary or desirable (a) to qualify as a regulated investment company under the Internal Revenue Code, (b) to comply with investment restrictions adopted by the Fund in accordance with the requirements of the 1940 Act or the securities laws of states where shares will be offered or (c) in light of changed market conditions.

7. The Exchange will be effectuated pursuant to an agreement and plan of exchange (the "Plan") to be approved both by a majority in number of the general partners and by a majority in interest of the limited partners of the Partnership, in accordance with the Partnership Agreement. A registration statement under the 1933 Act on Form N–14 relating to the Exchange has been filed on behalf of the Fund. Solicitation of limited partner approval of the Plan will be made by means of a prospectus/proxy statement that forms part of the N–14 registration statement. The prospectus/proxy statement will disclose all material facts relevant to a consideration of the Exchange, including, but not limited to, the nature of and reasons for the Exchange, the tax and other consequences to the partners of the Partnership, the financial information required by Form N–14, and comparisons of the Fund and the Partnership in terms of their investment objectives and policies, fee structures, management structures and other aspects of their operations.

8. The Exchange will benefit partners of the Partnership, who will gain the benefits of liquidity (Fund shares, unlike Partnership interests, will not be subject to trading restrictions) and diversification (the Fund's pool of assets should be larger than the Partnership's because the Fund is not limited to 100 shareholders). Moreover, the Exchange will not result in the recognition of any gain or loss by the partners and will allow the Fund to acquire portfolio securities without incurring brokerage expenses.

9. No brokerage commission, fee or other remuneration will be paid in connection with the Exchange. Neither the limited partners nor Baupost, Klarman, Stevenson, or Poorvu will receive any financial benefit from the Exchange except for their pro rata interest in shares of the Fund distributed by the Partnership upon its dissolution and the generalized benefits described in the preceding paragraph.

10. The Exchange will not be effected unless and until each of the following has occurred: (a) The N–1A and N–14 registration statements have been declared effective; (b) the Plan has been approved by a majority in number of the general partners and by a majority in interest of the limited partners of the Partnership; (c) the SEC has issued an order relating to this application; and (d) the Fund has received a favorable opinion of counsel regarding the tax consequences of the Exchange to the

Fund, the Partnership, and the limited partners.

11. The Partnership pays Baupost a quarterly fee for its advisory and custodial services equal to .10% of the Partnership's net asset value on the last day of each calendar quarter. Each limited partner also pays Baupost a quarterly fee of .15% of the net asset value of his account, subject to adjustment in certain circumstances. The Partnership pays all of its own operating expenses.

12. The Fund will pay Baupost a quarterly management fee at the annual rate of 1.0% of the Fund's average net assets. The Fund will also pay Baupost a quarterly administrative fee at the annual rate of .25% of the Fund's average net assets for acting as the Fund's transfer and dividend disbursing agent and administrator. Baupost has agreed to reduce its management fee by up to .75% until further notice to the extent that the Fund's total annual expenses (including the management and administrative fees, but excluding brokerage commissions, transfer taxes, interest and expenses relating to preserving the value of the Fund's investments) would otherwise exceed 1.5% of the Fund's average net assets. The Fund pays all of its own operating expenses.

13. The Fund will bear all costs incurred in connection with the Exchange and the organization of the Fund, which are estimated to be $150,000.

14.The board of trustees of the Fund has considered the desirability of the Exchange from the point of view of both the Fund and the Partnership, and a majority of the board, including a majority of the noninterested trustees, has concluded that (a) the Exchange is in the best interests of the Fund, the Partnership, and the limited partners of the Partnership, (b) the Exchange will not dilute the financial interests of the Fund's sole shareholder (Poorvu) or of the partners of the Partnership when their interests are converted to shares of the Fund, and (c) the terms of the Exchange as reflected in the Plan have been designed to meet the criteria contained in section 17(b) of the 1940 Act, i.e., that the Exchange be reasonable and fair, not involve overreaching and be consistent with the policies of the Fund.

15. The general partners of the Partnership have considered the desirability of the Exchange from the point of view of the Partnership, and a majority of the general partners have concluded that (a) the Exchange is in the best interest of the Partnership and the limited partners thereof, and (2) the Exchange will not dilute the financial interests of the partners when their Partnership interests are converted to Fund shares.

Applicant's Legal Conclusions

1. Applicants seek an exemption pursuant to section 17(b) of the Act from the provisions of section 17(a) to the extent necessary to permit the Fund to acquire the assets of the Partnership in exchange for Fund shares. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling to or purchasing from such investment company any security or other property. The Partnership, Baupost, Klarman, Stevenson, and Poorvu may all be considered affiliates, or affiliates of affiliates, of the Fund under section 2(a)(3)(C) of the Act.

2. Section 17(b) of the Act authorizes the SEC to exempt any person from the provisions of section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, (b) the proposed transaction is consistent with the policy of the registered company concerned, and (c) the proposed transaction is consistent with the general purposes of the Act.

3. After the Exchange, former limited partners will hold substantially the same assets as Fund shareholders as they had previously held as limited partners. In this sense, the Exchange can be viewed as a change in the form in which assets are held, rather than as a disposition giving rise to section 17(a) concerns. In any event, applicants assert that the Exchange meets all of the standards of section 17(b).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-25077 Filed 10-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17806; 811-4669]

Flexsecure

October 17, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Flexsecure.

RELEVANT 1940 ACT SECTIONS: Section 8(f) and Rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 24, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 13, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, Flexsecure, c/o Security Benefit Life Insurance Company, 700 Harrison, Topeka, Kansas 66636.

FOR FURTHER INFORMATION CONTACT: Evelyn C. Malone, Legal Technician, (202) 272-3011, or Heidi Stam, Assistant Chief (202) 272-2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant, a unit investment trust registered as an investment company under the 1940 Act, is a separate account of Security Benefit Life Insurance Company. A registration statement was filed on May 13, 1986 (File No. 33-5740) for an indefinite amount of shares of the same title and class. The registration statement was never declared effective and therefore no public offering was commenced.

2. The Applicant has never had any assets nor has it ever had any securityholders.

3. The Applicant has not debts or liabilities which remain outstanding.

4. The Applicant is not a party to any litigation or administrative proceedings.

5. The Applicant is not now engaged, nor does it propose to engage, in any business activities other than those

necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-25078 Filed 10-23-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1277]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Study Group B; Meeting

The Department of State announces that Study Group B (Switching, Signaling, and ISDN) of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Wednesday, November 7, 1990, 9:30 a.m., in Conference Room 1912, Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda for the meeting is as follows:

1. Approve September 12 meeting minutes.

2. Review results and activities of CCITT Study Group XI Meeting (October 1-12).

3. Consider contributions—

—CCITT Study Group XVIII (November 26-December 7)

—Others appropriate for Study Group B

4. Review Recommendations G.703, G.704, G.706, G.707, G.708, G.709, I.113, I.121, I.150, I.211, I.311, I.321, I.327, I.361, I.362, I.363, I.413, I.432, and I.610 to be approved at Study Group XVIII Meeting according to Resolution No. 2 procedures.

5. Consider nominations for U.S. delegation to Study Group XVIII Meeting.

6. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Earl S. Barbely, Department of State, 202-647-2592 (fax 202-647-7407). The above includes government and non-government attendees. All attendees must use the C Street entrance.

Dated: October 11, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 90-25095 Filed 10-23-90; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1278]

Shipping Coordinating Committee; Meeting

The National Committee for the Prevention of Marine Pollution (NCPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on November 7, 1990, at 9:30 a.m. in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the thirtieth session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) scheduled for November 12-16, 1990. Proposed U.S. position on MEPC agenda item issues will be discussed.

The major items for discussion will be the following:

1. Amendments to the International Convention for the Prevention of Pollution for Ships, 1973, and the Protocols related thereto, 1978, as amended, (MARPOL 73/78), for the provision of shipboard oil spill response plans. The MEPC will be considering the form and content of such plans.

2. Adoption of amendments to MARPOL 73/78 to designate the Antarctic Area as a special area under Annexes I and V. This proposal is unique in that the required reception facilities for oily and garbage wastes would not be permitted to be located in the Antarctic Area. The flag state of the vessels entering the Antarctic Area would have the primary burden of ensuring that adequate reception facilities are provided.

3. Adoption of amendments to the 1973 Intervention Protocol to the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969.

4. Prevention of air pollution from ships, including fuel oil quality. The text of the resolution from the Helsinski Commission will be considered concerning harmful emissions of chlorofluorocarbons.

5. Continued development of drafts for section 2 (Search and Recovery of Packaged Goods Lost at Sea) of the IMO Manual on Chemical Pollution. At this session of MEPC, experts will be dealing with the actions to be taken in case of loss of explosives and radioactive materials.

6. Enforcement of pollution conventions; specifically, violations of conventions and penalties imposed, and reports on marine pollution incidents.

7. Use of tributyl tin compounds in antifouling paints for ships. The U.S. has prepared and submitted a resolution to the MEPC concerning proposed control measures for tributyl tin compounds.

8. Inter-related work of other Committees and Subcommittees.

Following this meeting, at 1 p.m., the NCPMP will conduct an open meeting to review the agenda items to be considered at the Conference on International Cooperation on Oil Pollution Preparedness and Response (OPPR) scheduled for November 19-30, 1990. Proposed U.S. positions on the articles of the proposed convention will be discussed.

The major items for discussion will be the following:

1. The mechanisms by which IMO can best facilitate and coordinate provision of information, advisory services, and technical assistance to Parties engaged in oil pollution preparedness or spoil response.

2. Requirements for oil spill response plans for commercial vessels. The form and content of such plans will be discussed.

3. Promotion of research and development efforts into pollution response and the sharing of such information among interested parties.

4. Promotion of bilateral and multilateral cooperation in pollution spill preparedness and response.

5. Development of procedures for reimbursement of governments providing assistance in pollution response.

Members of the public may attend both meetings up to the seating capacity of the room.

For further information pertaining to these NCPMP meetings, contact either Commander W. St. J. Chubb or Lieutenant M.L. McEwen, U.S. Coast Guard Headquarters (G-MEP-3), 2100 Second Street SW., Washington, DC 20593, Telephone: (202) 267-0419.

Dated October 16, 1990.

Stephen M. Miller,

Acting Chairman, Shipping Coordinating Committee.

[FR Doc. 90-25096 Filed 10-23-90; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1279]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Ship Design and Equipment; Meeting

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on November 7, 1990 at 9:30 a.m. in room 6419 at United States Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC.

The purpose of the meeting will be to prepare for the 34th Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE) scheduled for March 4 to 8, 1991. Items of discussion will include the following: Use on board ships of ozone-depleting halons; guidelines on standard calculations for anchor positioning systems for MODUs: Guidelines for dynamic positioning systems for MODUs and ships engaged in similar operations; materials other than steel for pipes; maneuverability of ships and maneuvering standards; helicopter facilities offshore; revision of design and construction requirements in the 1977 Torremolinos Convention; requirements for purpose and non-purpose-built ships dedicated to the carriage of irradiated nuclear fuel; development of a code on alarms and indicators; amendments of regulation II-1/45 of SOLAS 1974, as amended; ventilation of vehicle decks during loading and unloading; review of implementation status of Assembly resolutions related to the work of the Subcommittee; underpressure in cargo oil tanks due to oil outflow after damage; carriage of dangerous goods on vehicle decks of passenger ships; consideration of the introduction of the Harmonized System of Surveys and Certification into the MODU Code; standards for shipboard incinerators for disposing of ship-generated waste; revision of the Code of Safety for Dynamically Supported Craft; hull cracking on ships; fuel line failures; bilge de-watering requirements in open-top container ships; review of the adequacy of IMO instruments in preventing and mitigating marine pollution incidents; and, the role of the human element in maritime casualties.

Members of the public may attend up to the seating capacity of the room.

The IMO DE Subcommittee works to develop international agreements, guidelines, and standards for machinery, equipment, and systems as these relate to the marine industry. In most cases, these international agreements, guidelines, and standards form the basis for national standards/regulations and class society rules. The U.S. SOLAS Working Group supports the U.S. Representative to the IMO DE Subcommittee in developing the U.S. position on those issues raised at the IMO DE Subcommittee meetings. Because of the impact on domestic regulations through development of these international guidelines, standards, and regulations, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas. All shipping companies, shipyards, design firms, naval architects, marine engineers, and consultants are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within IMO DE. Since these meetings are open to the public, anyone may attend.

For further information contact Captain T.E. Thompson at (202) 267-2967, U.S. Coast Guard Headquarters (G-MTH), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: October 16, 1990.

Stephen M. Miller,

Acting Chairman, Shipping Coordinating Committee.

[FR Doc. 90-25097 Filed 10-23-90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Portland International Jetport, Portland, ME; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Portland, Maine under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On March 27, 1990, the FAA determined that the noise exposure maps, submitted by the City of Portland, Maine, under part 150, were in compliance with applicable requirements. On September 21, 1990, the Administrator approved the Portland International Jetport (PWM) noise compatibility program. Out of the 18 proposed program elements 17 were approved. One was approved in part.

EFFECTIVE DATE: The effective date of the FAA's approval of the PWM noise compatibility program is September 21, 1990.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE-602, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273-7060.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the PWM noise compatibility program, effective September 21, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval or FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

(a) the noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airprt and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant

agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The city of Portland submitted to the FAA, on December 27, 1988, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1986 to November 1989. The PWM noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 27, 1990. Notice of this determination was published in the Federal Register on May 1, 1990.

The PWM study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1993. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 27, 1990, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 18 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 21, 1990.

Approval was granted for 17 specific program elements. One element (monitoring proposals for new scheduled operations between 11:30 p.m. and 6:15 a.m.) was approved in part.

The 17 approved program elements include a noise barrier, engine runup building, preferential runway use, preferential arrival and departure routes, noise abatement departure profiles, Noise Abatement Committee review of implementation, quantitative review of changes in noise exposure, and land use measures which deal with land acquisition and relocation, soundproofing, easement acquisition, airport zoning and real estate disclosure.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator September 21, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the office of the Airport Manager, Portland International Jetport, 1001 Westbrook Street, Portland, Maine.

Issued in Burlington, Massachusetts on October 10, 1990.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 90-25140 Filed 10-23-90; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-90-43]

Petitions for Exemptions; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 14, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB) 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 18, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25052.

Petitioner: Temsco Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.203(a)(1).

Description of Relief Sought: To extend Exemption No. 4760A, which allows petitioner and other air taxi/commercial operators to conduct seaplane operations inside the Ketchikan, Alaska, control zone under Special Visual Flight Rules below 500 feet above the surface. Exemption No. 4760A will expire on February 28, 1991.

Docket No. 26340.

Petitioner: Delta Air Lines, Inc.

Sections of the FAR Affected: 14 CFR 121.433, 121.440, and 121.441.

Description of Relief Sought: To allow petitioner to conduct a single annual visit recurrent-training program for its pilots as a transition to the advanced qualification program.

Disposition of Petitions

Docket No.: 24808.
Petitioner: Pan American World Airways.
Sections of the FAR Affected: 14 CFR 121.440, 121.433, and 121.441 and Part 121, Appendix F.
Description of Relief Sought/ Disposition: To extend Exemption No. 4833, as amended, that allows petitioner to combine recurrent training and proficiency checks for pilots in command into one annual training and proficiency check session. In addition, the exemption allows the line check required by § 121.440 to be administered 6 months subsequent to the annual training and proficiency check session in lieu of the recurrent training.

Grant, October 10, 1990, Exemption No. 4833B

Docket No.: 25482.
Petitioner: Acme School of Aeronautics.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/ Disposition: To amend and extend Exemption No. 4919, as amended, which permits petitioner to hold examining authority for flight instructor and airline transport pilot written tests. The amendment would clarify the language of the conditions and limitations of the exemption.

Grant, October 12, 1990, Exemption No. 4919B

Docket No.: 25636.
Petitioner: International Aero Engines.
Sections of the FAR Affected: 14 CFR 21.325 (b)(1) and (b)(3).
Description of Relief Sought/ Disposition: To extend Exemption No. 4991 that allows export airworthiness approvals to be issued for Class I products (engines) assembled and tested in the United Kingdom and Class II and III products manufactured in the International Aero Engines consortium countries of Italy, West Germany, Japan, and the United Kingdom.

Grant, October 10, 1990, Exemption No. 4991A

Docket No.: 25844.
Petitioner: 4 W Air.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow properly trained pilots employed by petitioner to perform the task of converting the cabins of certain aircraft from passenger to cargo configurations, and the reverse, using the aircraft manufacturer's instructions for guidance, when such aircraft are specifically designed to be so converted.

Grant, October 5, 1990, Exemption No. 5242.

[FR Doc. 90-25137 Filed 10-23-90; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the meeting of the Executive Committee to be held November 16, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) Approval of the September 27, 1990, Executive Committee meeting minutes; (3) Executive Director's report; (4) Special Committee activities report for September-October 1990; (5) Review/ approve 1991 operating and 1992 planning budgets; (6) Consideration for approval of Special Committee reports; (7) Consideration of proposals to establish new Special Committees; (a) Boeing request to establish a new Special Committee on Automatic Dependent Surveillance; (b) FAA request to establish a Special Committee for the review and update of DO-198, Minimum Operational Performance Standards for Airborne MLS Area Navigation Equipment; (c) ARINC request to establish a new Special Committee that will address VHF transceivers optimized for data communications; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 17, 1990.

Geoffrey R. McIntyre,
Designated Officer.

[FR Doc. 90-25138 Filed 10-23-90; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

National Motor Carrier Advisory Committee; Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold its next regularly scheduled meeting on November 1-2, 1990, at the U.S. Department of Transportation Headquarters, 400 Seventh Street SW., Washington, DC 20590. The meeting will begin at 8:30 a.m. on both days, in room 4234 and is open to the public.

Topics to be discussed include the diesel fuel situation, DOT reauthorization proposal, truck accident data, long-term highway financing, uniformity, and the National Governors' Association Consensus Agenda.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, Federal Highway Administration, HIA-20, room 3104, 400 Seventh Street SW., Washington, DC 20590, (202) 366-1861. Office hours are from 7:45 a.m. to 4:15 p.m., est., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: October 17, 1990.

T.D. Larson,
Administrator.

[FR Doc. 90-25125 Filed 10-23-90; 8:45 am]
BILLING CODE 4910-22-M

Urban Mass Transportation Administration; UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1990, Public Law 101-164, signed into law by President George Bush on November 21, 1989, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to Sections 3 and 9 of Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., room 9301, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Obligation date
Santa Cruz Metropolitan Transit District, Santa Cruz, CA	CA-03-0353-00	$75,000	09/28/90
Yolo County Transit Authority, Sacramento, CA	CA-03-0357-00	757,500	09/28/90
Connecticut Department of Transportation, Connecticut	CT-03-0066-00	18,572,400	09/24/90
Norwalk Transit District, Norwalk, CT	CT-03-0077-00	4,800,000	09/28/90
Washington Metropolitan Area Transit Authority, Washington, DC, MD, VA	DC-03-0022-00	4,613,000	09/20/90
Metropolitan Dade Transit Agency, Miami, FL	FL-03-0085-01	20,100,000	09/28/90
Metropolitan Dade Transit Agency, Miami, FL	FL-03-0106-00	3,375,000	09/28/90
Lakeland Area Mass Transit District, Lakeland, FL	FL-03-0107-00	219,999	09/27/90
Bloomington-Normal Public Transit System, Bloomington-Normal, IL	IL-03-0148-00	418,500	09/28/90
City of Chicago, Chicago, IL-Northwestern, IN	IL-03-0150-00	992,016	09/17/90
City of Decatur, Decatur, IL	IL-03-0151-00	91,500	09/26/90
Greater Peoria Mass Transit District, Peoria, IL	IL-03-0152-00	2,499,999	09/26/90
Northern Indiana Commuter Transportation District, Chicago, IL-Northwestern, IN	IN-03-0060-00	2,250,000	09/28/90
Northern Indiana Commuter Transporation District, Chicago, IL-Northwestern IN	IN-03-0061-00	16,092,999	09/28/90
Kansas Department of Transportation, Kansas	KS-03-0011-00	450,000	09/26/90
Massachusetts Bay Transportation Authority, Boston, MA	MA-03-0165-00	44,250,000	09/13/90
Brockton Area Transit Authority, Brockton, MA	MA-03-0167-00	3,999,999	09/28/90
Grand Rapids Area Transit Authority, Grand Rapids, MI	MI-03-0118-00	1,074,015	09/28/90
Michigan Dept. of Transportation, Michigan	MI-03-0119-00	3,147,612	09/28/90
Metropolitan Transit Commission, Minneapolis-St Paul, MN	MN-03-0042-00	6,124,998	09/28/90
Bi-State Development Agency, St Louis, MO-IL	MO-03-0027-01	66,511,012	09/27/90
City of Farmington, Farmington, MO	MO-03-0028-00	18,000	09/27/90
Missouri Highway and Transportation Department, Missouri	MO-03-0029-00	2,550,600	09/26/90
Great Falls Transit District, Great Falls, MT	MT-03-0010-00	1,579,617	09/27/90
City of Billings, Billings, MT	MT-03-0013-00	1,931,250	09/27/90
City of Charlotte, Charlotte, NC	NC-03-0025-00	3,881,250	09/27/90
City of Lincoln, Lincoln, NE	NE-03-0024-00	831,000	09/26/90
New York Metropolitan Transportation Authority, New York, NY-Northeastern, NJ	NY-03-0250-00	2,512,500	09/21/90
New York City Department of Transportation, New York, NY-Northeastern, NJ	NY-03-0259-00	3,538,125	09/21/90
Tri-County Metropolitan Transportation District of Oregon, Portland, OR-WA	OR-03-0038-00	14,200,000	09/26/90
City of Philadelphia, Philadelphia, PA-NJ	PA-03-0088-05	1,104,744	09/20/90
Port Authority of Allegheny County, Pittsburgh, PA	PA-03-0204-01	5,000,001	09/27/90
Port Authority of Allegheny County, Pittsburgh, PA	PA-03-0214-00	3,999,999	09/28/90
Metropolitan Bus Authority, San Juan, PR	PR-03-0040-00	3,000,000	09/27/90
Rhode Island Department of Transportation, Providence-Paw-War, MA-RI	RI-03-0014-00	248,625	09/28/90
Brazos Valley Community Action Agency, Bryan-College Station, TX	TX-03-0135-00	173,424	09/26/90
Potomac and Rappahannock Transportation Commission, Prince William County, Virginia	VA-03-0039-00	3,511,248	09/28/90
Peninsula Transportation District Commission, Newport News-Hampton, VA	VA-03-0045-00	3,600,000	09/27/90
Pierce County Public Transportation Benefit Area, Tacoma, WA	WA-03-0067-00	2,533,332	09/27/90
Grays Harbor Transportation Authority, Hoquiam, Washington	WA-03-0068-00	1,170,000	09/28/90

SECTION 9 GRANTS

Transit Property	Grant number	Grant amount	Obligation date
Municipality of Anchorage, Anchorage, AK	AK-90-X008-00	$796,907	09/28/90
Birmingham-Jefferson County Transit Authority, Birmingham, AL	AL-90-X021-02	68,000	09/27/90
Tuscaloosa County Parking and Transit Authority, Tuscaloosa, AL	AL-90-X048-00	216,520	09/28/90
Mobile Transit Authority, Mobile, AL	AL-90-X049-00	1,594,361	09/26/90
Alabama Highway Department, Columbus, GA-AL	AL-90-X050-00	850,500	09/26/90
Alabama Highway Department, Columbus, GA.-AL	AL-90-X051-00	108,800	09/26/90
City of Huntsville, Huntsville, AL	AL-90-X052-00	822,180	09/26/90
Metropolitan Transit Development Board, San Diego, CA	CA-90-X110-04	2,300,000	09/28/90
Metropolitan Transit Development Board, San Diego, CA	CA-90-X327-02	208,000	09/28/90
Metropolitan Transit Development Board, San Diego, CA	CA-90-X376-00	10,851,139	09/28/90

SECTION 9 GRANTS—Continued

Transit Property	Grant number	Grant amount	Obligation date
Southern California Rapid Transit District, Los Angeles-Long Beach, CA	CA-90-X377-03	24,472,000	09/28/90
Southern California Rapid Transit District, Los Angeles-Long Beach, CA	CA-90-X377-02	4,972,000	09/26/90
North San Diego County Transit Development Board, San Diego, CA	CA-90-X397-01	2,982,400	09/28/90
City of Santa Maria Area Transit, Santa Maria, CA	CA-90-X401-00	1,005,609	09/29/90
Yolo County Transit Authority, Sacramento, CA	CA-90-X404-00	123,098	09/28/90
South Coast Area Transit, Oxnard-Ventura-1,000 Oaks, CA	CA-90-X405-00	1,582,073	09/28/90
City of Riverside, San Bernardino-Riverside, CA	CA-90-X406-00	146,400	09/28/90
City of Luguna Beach, Los Angeles-Long Beach, CA	CA-90-X407-00	206,000	09/28/90
Santa Cruz Metropolitan Transit District, Santa Cruz, CA	CA-90-X408-00	882,885	09/28/90
Riverside Transit Agency, San Bernardino-Riverside, CA	CA-90-X409-00	2,030,754	09/28/90
Riverside Transit Agency, San Bernardino-Riverside, CA	CA-90-X410-00	279,891	09/29/90
San Diego Association of Governments, San Diego, CA	CA-90-X412-00	400,000	09/28/90
Valley Regional Planning Agency, Bridgeport, CT	CT-90-X164-00	160,000	09/28/90
Milford Transit District, Bridgeport, CT	CT-90-X170-00	223,000	09/28/90
Greater Bridgeport Regional Planning Agency, Bridgeport, CT	CT-90-X171-00	48,000	09/28/90
Midstate Regional Planning Agency, Meriden, CT	CT-90-X172-00	50,000	09/28/90
Greater Waterbury Transit District, Waterbury, CT	CT-90-X173-00	208,000	09/28/90
Greater Bridgeport Transit District, Bridgeport, CT	CT-90-X174-00	6,966,800	09/28/90
Connecticut Department of Transportation, Connecticut	CT-90-X176-00	9,429,680	09/28/90
Central Connecticut Regional Planning Agency, Bristol, CT	CT-90-X177-00	36,400	09/28/90
Capitol Region Council of Governments, Hartford, CT	CT-90-X178-00	55,248	09/28/90
Delaware Transportation Authority, Delaware	DE-90-X009-01	120,021	09/18/90
Metropolitan Dade Transit Agency, Miami, FL	FL-90-X140-01	480,000	09/26/90
Manatee County Board of County Commissioners, Sarasota-Bradenton, FL	FL-90-X153-00	771,895	09/27/90
Pasco County Board of County Commissioners, St. Petersburg, FL	FL-90-X154-00	246,470	09/26/90
Pinellas Suncoast Transit Authority, St. Petersburg, FL	FL-90-X155-00	5,088,555	09/28/90
Okaloosa County Board of County Commissioners, Fort Walton Beach, FL	FL-90-X157-00	112,745	09/26/90
Panama City Urbanized Area Metropolitan Planning Organization, Panama City, FL	FL-90-X158-00	64,000	09/26/90
Georgia Dept. of Transportation—Bureau of Public Transportation, Georgia	GA-90-X058-00	3,384,843	09/26/90
City of Kankakee, Kankakee, Illinois	IL-90-X164-00	16,042	09/28/90
City of Danville, Danville, IL	IL-90-X166-00	1,214,600	09/28/90
South Bend Public Transportation Corporation, South Bend, IN-MI	IN-90-X136-01	64,348	09/28/90
East Chicago Bus Transit System, Chicago, IL-Northwestern IN	IN-90-X140-00	312,437	09/28/90
Evansville Urban Transit Study, Evansville, IN-KY	IN-90-X141-00	1,465,742	09/28/90
Gary Public Transportation Corporation, Chicago, IL-Northwestern IN	IN-90-X142-00	2,597,949	09/28/90
Michiana Area Council of Governments, South Bend, IN-MI	IN-90-X143-00	479,382	09/28/90
City of Alexandria, Alexandria, LA	LA-90-X107-00	1,299,400	09/21/90
City of Shreveport, Shreveport, LA	LA-90-X110-00	1,334,604	09/28/90
Pioneer Valley Transit Authority, Springfield Chic-Holy, MA-CT	MA-90-X100-01	378,864	09/28/90
Mass Transit Administration, Baltimore, MD	MD-90-X043-00	1,067,353	09/29/90
Lewiston-Auburn Transit Committee, Lewiston-Auburn, ME	ME-90-X050-00	8,750	09/28/90
Duluth Transit Authority, Duluth-Superior, MN-WI	MN-90-X049-00	177,039	09/28/90
City of Columbia Department of Public Works, Columbia, MO	MO-90-X070-00	330,724	09/28/90
City of St. Joseph, St. Joseph, MO-KS	MO-90-X072-00	567,300	09/28/90
Central Mississippi Planning and Development District, Jackson, MS	MS-90-X034-00	10,364	09/26/90
City of Jackson—Mayor's Office of Development Assistance, Jackson, MS	MS-90-X035-00	1,690,376	09/27/90
City of Billings, Billings, MT	MT-90-X028-00	968,146	09/28/90
City of Fayetteville, Fayetteville, NC	NC-90-X113-00	945,376	09/26/90
Town of Chapel Hill, Durham, NC	NC-90-X114-00	1,283,970	09/26/90
City of Wilmington, Wilmington, NC	NC-90-X115-00	391,316	09/26/90
Guilford County, Greensboro, NC	NC-90-X116-00	297,052	09/28/90
City of Gastonia, Gastonia, NC	NC-90-X118-00	798,826	09/27/90
City of Winston-Salem, Winston-Salem, NC	NC-90-X119-00	1,406,149	09/28/90
City of Bismarck, Bismarck-Mandan, ND	ND-90-X022-00	176,700	09/28/90
City of Lincoln, Lincoln, NE	NE-90-X020-01	450,400	09/28/90
Omaha Metro Area Transit, Omaha, NE-IA	NE-90-X026-00	188,000	09/28/90
City of Nashua, Nashua, NH	NH-90-X023-00	924,701	09/28/90
Cooperative Alliance for Seacoast Transportation, Portsmouth-Dover-Roch, NW	NH-90-X024-00	385,695	09/28/90
City of Albuquerque, Albuquerque, NM	MN-90-X029-00	1,648,121	09/28/90
City of Rome, V.I.P. Transportation, Utica-Rome, NY	NY-90-X188-00	141,477	09/27/90
City of Poughkeepsie, Poughkeepsie, NY	NY-90-X189-00	580,000	09/27/90
Broome County, Binghamton, NY	NY-90-X190-00	1,781,351	09/28/90
Central Ohio Transit Authority, Columbus, OH	OH-90-X107-01	1,600,000	09/28/90
Southwest Ohio Regional Transit Authority, Cincinnati, OH-KY	OH-90-X123-01	96,000	09/28/90
Southwest Ohio Regional Transit Authority, Cincinnati, OH-KY	OH-90-X130-01	384,000	09/28/90
Canton Regional Transit Authority, Canton, OH	OH-90-X132-01	4,000	09/28/90
Central Ohio Transit Authority, Columbus, OH	OH-90-X135-00	74,400	09/28/90
Ohio Dept. of Transportation, Columbus, OH	OH-90-X136-00	5,893,657	09/28/90
Enid Public Transportation Authority, Enid, OK	OK-90-X035-00	318,150	09/28/90

SECTION 9 GRANTS—Continued

Transit Property	Grant number	Grant amount	Obligation date
County of Lackawanna Transit System, Scranton-Wilkes Barre, PA	PA-90-X147-04	119,061	09/14/90
Cumberland-Dauphin-Harrisburg Transit Authority, Harrisburg, PA	PA-90-X197-00	262,418	09/26/90
Commonwealth of Puerto Rico—Department of Transp. and Public Works, San Juan, PR	PR-90-X011-05	2,808,000	09/27/90
Municipality of Catano, San Juan, PR	PR-90-X013-01	200,000	09/26/90
Municipality of Canovanas, San Juan, PR	PR-90-X032-03	125,000	09/26/90
Municipality of Aguadilla, Aguadilla, PR	PR-90-X038-01	1,592,132	09/26/90
Municipality of Loiza, San Juan, PR	PR-90-X049-01	160,000	09/26/90
Municipality of Arecibo, Arecibo, PR	PR-90-X054-00	188,000	09/27/90
Municipality of Moca, Aguadilla, PR	PR-90-X057-00	48,000	09/26/90
Rhode Island Department of Transportation, Providence-Paw-War, MA-RI	RI-90-X015-00	1,057,812	09/28/90
City of Anderson, Anderson, SC	SC-90-X034-00	169,500	09/28/90
City of Charleston, Charleston, SC	SC-90-X039-00	1,701,787	09/28/90
City of Bristol, Tennessee, Bristol, TN-VA	TN-90-X082-01	60,000	09/26/90
City of Clarksville, Clarksville, TN-KY	TN-90-X083-02	624,800	09/26/90
City of Kingsport, Kingsport, TN-VA	TN-90-X087-00	154,890	09/26/90
Capital Metropolitan Transportation Authority, Austin, TX	TX-90-X091-03	875,382	09/24/90
City of Port Arthur, Port Arthur, TX	TX-90-X111-01	116,000	09/28/90
City of Arlington, Dallas-Ft. Worth, TX	TX-90-X189-00	627,000	09/28/90
City of Brownsville, Brownsville, TX	TX-90-X191-00	2,961,280	09/28/90
City of Abilene, Abilene, TX	TX-90-X192-00	2,208,260	09/28/90
Texoma Council of Governments, Sherman-Denison, TX	TX-90-X194-00	219,821	09/28/90
Permian Basin Regional Planning Commission, Midland, TX	TX-90-X195-00	40,000	09/28/90
City of Lubbock, Lubbock, TX	TX-90-X196-00	1,863,000	09/28/90
City of Waco, Waco, TX	TX-90-X197-00	427,539	09/28/90
City of Port Arthur, Port Arthur, TX	TX-90-X198-00	1,467,320	09/28/90
Brazos Valley Community Action Agency, Bryan-College Station, TX	TX-90-X199-00	447,408	09/28/90
Tidewater Transportation District Commission, Norfolk-Portsmouth, VA	VA-90-X073-01	520,000	09/26/90
City of Bristol, Virginia, Bristol, TN-VA	VA-90-X077-00	80,067	09/26/90
City of Petersburg, Petersburg-Col Hgts-Hope, VA	VA-90-X078-00	274,139	09/26/90
City of Charlottesville, Charlottesville, VA	VA-90-X079-00	694,097	09/27/90
Greater Richmond Transit Company, Richmond, VA	VA-90-X080-00	719,200	09/26/90
Greater Lynchburg Transit Company, Lynchburg, VA	VA-90-X081-00	879,743	09/26/90
Washington State Department of Transportation Marine Division, Seattle, Washington	WA-90-X106-00	1,200,000	09/28/90
City of Yakima, Yakima, WA	WA-90-X109-00	1,544,222	09/28/90
City of Green Bay Transit System, Green Bay, WI	WI-90-X121-01	18,400	09/28/90
City of Eau Claire Transit System, Eau Claire, WI	WI-90-X133-00	346,388	09/28/90
City of Racine, Racine, WI	WI-90-X134-00	1,258,034	09/28/90
City of Sheboygan, Sheboygan, WI	WI-90-X136-00	4,000	09/28/90
City of Madison, Madison, WI	WI-90-X137-00	191,462	09/28/90
Kanawha Valley Regional Transportation Authority, Charleston, WV	WV-90-X038-00	120,000	09/26/90
Tri-State Transit Authority, Huntington-Ash, WV-KY-OH	WV-90-X039-00	743,469	09/27/90
Eastern Ohio/Ohio Valley Regional Transportation Authority, Wheeling, OH-WV	WV-90-X040-00	858,856	09/27/90
City of Casper, Casper, WY	WY-90-X008-00	322,409	09/28/90

Brian W. Clymer,

Administrator.

[FR Doc. 90-25079 Filed 10-23-90; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC-58; OTS No. 4996]

FirstSouth Savings Association, Pittsburgh, PA; Final Action; Approval of Conversion Application

Notice is hereby given that on October 3, 1990, the office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to the delegated authority, approved the application of FirstSouth Savings Association, Pittsburgh, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

Dated: October 10, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-25092 Filed 10-23-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-59]

United Federal Savings Bank, Galesburg, IL; Final Action; Approval of Conversion Application

Notice is hereby given that on October 10, 1990, the Director of the Office of Thrift Supervision, or his designee acting pursuant to delegated authority, approved the application of United Federal Savings Bank, Galesburg, Illinois, for permission to convert to the stock form of organization pursuant to a supervisory conversion. Copies of the approval are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

Dated: October 10, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–25093 Filed 10–23–90; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 206
Wednesday, October 24, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 41167, October 9, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETINGS: 11:30 a.m., Friday, October 26, 1990.

CHANGE IN THE MEETINGS: The Commission has cancelled the closed meeting to discuss enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary for the Commission.

[FR Doc. 90-25222 Filed 10-22-90; 2:19 pm]

BILLING CODE 6351-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 22, 29, November 5, and 12, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 22

Thursday, October 25

10:00 a.m.
Periodic Briefing on Industry Implementation of Generic Safety Issues (Public Meeting)

Friday, October 26

10:00 a.m.
Briefing on NUMARC's Perspective of the State of the Nuclear Industry (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Intervenors' Motion to Reopen the Record in Seabrook and to Shutdown the Reactor

Week of October 29—Tentative

Monday, October 29

10:00 a.m.
Briefing on Issues Raised by the Provision Requiring Title Transfer of Low Level Waste (Public Meeting)

Tuesday, October 30

10:00 a.m.
Briefing on Nonprescriptive Nuclear Safety Regulation (Public Meeting)

Wednesday, October 31

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 5—Tentative

Thursday, November 8

10:00 a.m.
Briefing on Progress of Research in the Area of Organization and Management (Public Meeting)
2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 12—Tentative

Friday, November 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4–0 on October 17, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Final Rule: Interim Procedures for Agency Appellate Review" (Public Meeting), be held on October 17 and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: October 18, 1990.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 90-25220 Filed 10-22-90; 2:19 pm]

BILLING CODE 7590-01-M

federal register

Wednesday
October 24, 1990

Part II

Department of Housing and Urban Development

Office of Assistant Secretary

Public Housing Development/Major Reconstruction of Obsolete Public Housing, FY 1990; Invitation for New and Revised Applications; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N-90-3090; FR-2765-N-03]

Revision to Notice of Fund Availability: Public Housing Development/Major Reconstruction of Obsolete Public Housing, Fiscal Year 1990—Invitation for New and Revised Applications

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Revision to notice of fund availability (Revised NOFA); invitation for new and revised applications.

SUMMARY: On June 18, 1990 (55 FR 24816), the Department published in the Federal Register a notice announcing the availability of FY 1990 funding, and inviting eligible Public Housing Agencies (PHAs) to submit applications, for public housing development, or for the Major Reconstruction of Obsolete Public Housing (MROP) program, or for both programs (June 18, 1990 NOFA). The Department has determined that some aspects of the June 18, 1990 NOFA were flawed. Many of the applications were missing information or exhibits. In previous fiscal years, these documents would have been accepted after the application deadline, but the June 18, 1990 NOFA contained no process for correcting application deficiencies after the deadline date. In addition, the Department's June 18, 1990 NOFA imposed a strict priority for large family MROP applications, which did not realistically correspond to MROP needs. In fact, 15 MROP applications were submitted, but only one was found to be approvable under the June 18, 1990 NOFA. Given these circumstances, the Department elects to revise the June 18, 1990 NOFA.

This notice revises the June 18, 1990 NOFA to: (1) Afford eligible PHAs the opportunity to correct deficiencies in applications submitted under the June 18, 1990 NOFA; (2) modify the large family housing requirement for MROP applications; and (3) afford eligible PHAs, which previously did not submit applications under the June 18, 1990 NOFA, the opportunity to submit applications under the Revised NOFA. (The phrase "Revised NOFA" means the June 18, 1990 NOFA, as revised by this notice.) Applications previously submitted in response to the June 18, 1990 NOFA will be considered under the criteria of the Revised NOFA. The procedures for application submission under the Revised NOFA, and the criteria revised by this notice, are set forth in the Supplementary Information section of this document.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for the PHA's jurisdiction.

SUPPLEMENTARY INFORMATION:

1. Application Invitation

The Department of Housing and Urban Development (HUD) is accepting, and all eligible PHAs are invited to submit, new applications, and applications revised to correct deficiencies in applications previously submitted under the June 18, 1990 NOFA. Applications submitted under the June 18, 1990 NOFA which are not revised will be considered under the criteria prescribed by the Revised NOFA. All revised or new applications must be received by the Field Office by close of business (local time) on November 23, 1990.

2. Application Screening

Immediately after the deadline for receipt of applications under the Revised NOFA, Field Offices will screen each application to determine whether all information and exhibits required by the Revised NOFA were submitted. If an application lacks any information or exhibits, the PHA will be advised in writing, and will have 14 calendar days from the date of the issuance of such notification to deliver the missing information or documentation to the Field Office.

3. MROP Housing Type

Subparagraphs 4(i) and 9(b) of the June 18, 1990 NOFA are modified to exempt MROP applications from the requirement that only housing consisting of three or more bedrooms may be approved unless a Field Office written determination is made that there is little or no need for large family housing. MROP applications are also exempt from the requirements of section 6(j) of the United States Housing Act of 1937 which pertains to priority consideration to housing projects suitable for occupancy by families requiring three or more bedrooms.

4. Funding Assignments

Threshold approvable "fair-share exempt" applications and applications to be funded from the Headquarters Reserve shall have funds set aside before the balance of available funds is allocated to Regional Offices on the basis of fair-share factors. The following factors have been changed because of the transfer of the Caribbean Office from New York to the Atlanta Region:

Region	Fair-share factors (Percentage)
II. New York	18
IV. Atlanta	14

Within 100 calendar days of the PHA application submission deadline, each Regional Administrator shall submit to Headquarters a list identifying the 15 highest ranked "other" development and/or MROP projects.

Dated: October 17, 1990.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 90-25111 Filed 10-23-90; 8:45 am]

BILLING CODE 4210-33-M

federal register

Wednesday
October 24, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 23
Small Airplane Airworthiness Review Program Notice No. 4; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 26269, Notice No. 90-18A]

RIN 2120-AD20

Small Airplane Airworthiness Review Program Notice No. 4

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of Comment Period.

SUMMARY: This notice announces the extension of the comment period for the notice of proposed rulemaking (NPRM) for airframe and flight airworthiness standards resulting from the small airplane airworthiness review. The extension responds to a request from the Joint Airworthiness Authorities (JAA). The extension is needed to permit the JAA additional time to provide substantive response to the NPRM.

DATES: The comment period is being extended from October 25, 1990 to December 14, 1990.

ADDRESSES: Coments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26269, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to room 915-G, 800 Independence Avenue SW., Washington DC 20591. Comments delivered must be marked Docket No. 26269. Comments may be inspected in room 915-G between 8:30 a.m. and 5 p.m. on weekdays, except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel, ACE-7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Victor F. Sokoloski, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION: On June 28, 1990, the FAA issued Notice 90-18, titled Small Airplane Airworthiness Review Program Notice No. 4 (55 FR 26534). This resulted from proposals received at the Small Airplane Airworthiness Review Conference held on October 22-26, 1984, in St. Louis, Missouri.

By letter dated October 9, 1990, the Joint Airworthiness Authorities (JAA) requested that the FAA extend the comment period for Notice 90-18 in order to enable the JAA-23 Study Group to coordinate a European position. In view of the possibility of obtaining additional technical information and to provide for a more consistent set of airworthiness standards, the FAA agrees that it would be in the best interest of all concerned to grant the request. Accordingly, the comment period is being extended to December 14, 1990, to afford all interested persons the opportunity to comment on this notice.

Issued in Washington, DC on October 19, 1990.

Thomas E. McSweeny,

Deputy Director, Aircraft Certification Service, AIR-2.

[FR Doc. 90-25136 Filed 10-23-90; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
October 24, 1990

Part IV

Nuclear Regulatory Commission

10 CFR Part 2

Interim Procedures for Agency Apeliate Review and Options and Procedures for Direct Commission Review of Licensing Board Decisions; Final Rule and Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AD77

Interim Procedures for Agency Appellate Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule puts into place a transition plan which the Nuclear Regulatory Commission (NRC) is adopting to handle all appeals from initial decisions of presiding officers in all formal and informal agency adjudications, and certain other appellate and related matters, which are filed from the day after the date of publication of this final rule until the effective date of a final rule to be issued pursuant to the Commission's ongoing rulemaking proceeding for establishing procedures for direct agency appellate review by the Commission. A notice of proposed rulemaking in that proceeding is being published in this issue of the **Federal Register**. As that proposed rule explains, a new procedural system for direct appellate review by the Commission is necessitated by the Commission's recent decision to abolish the Atomic Safety and Licensing Appeal Panel which heretofore has provided an intermediate level of appeal as of right from initial decisions. The transition plan implemented by this final rule provides that, with certain exceptions, the Commission, rather than an appeal board, will provide agency appellate review for appellate matters filed in the interim period between the day after the date of this final rule and the effective date of a final appellate review rule. The Commission review, in this interim period, will follow existing procedures. Specific appellate matters which are pending before appeal boards on the date of this final rule will be decided by the appeal boards.

EFFECTIVE DATE: October 25, 1990.

FOR FURTHER INFORMATION CONTACT: E. Neil Jensen, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-492-1634.

SUPPLEMENTARY INFORMATION: In a companion document published in this issue of the **Federal Register**, the NRC announces a proposed rulemaking to establish procedures for direct review of initial decisions of presiding officers in all formal and informal agency adjudications by the commissioners of the NRC. Direct review by the commissioners will replace review by appeal boards constituted from the Atomic Safety and Licensing Appeal Panel. The Commission has decided to abolish the Appeal Panel. The notice of proposed rulemaking proposes to adopt a discretionary system of Commission review and invites comments on that choice and on what particular procedures should be adopted.

This final rule implements the plan the Commission is adopting to provide for an orderly transition from appellate review by appeal boards to appellate review by the Commission. The Commission has determined that an orderly transition will be assisted by the commissioners taking to themselves, with certain exceptions, all appeals and other appellate and related matters (including appeals from initial decisions, interlocutory appeals and motions, certified questions, referrals and petitions for directed certification) filed in the period beginning one day after publication of this document and ending on the effective date of a final rule. The Commission review during this interim period will follow existing procedures. Thus the present right of parties to a mandatory review on the merits of initial decisions will not be affected. All appeals and other appellate and related matters pending before an appeal board on the date of publication of this notice will be decided by the appeal board under current regulations.

This transition plan will enable appeal boards to conclude their work on pending appeals without interruption by new ones. In addition, by allowing appeal boards to complete all pending matters the work already expended on these matters will not be lost.

The Commission has allowed for an exception to the requirement that all new appellate matters be filed with it. If a filing is closely related to a matter currently pending before an appeal board, it should be decided by the appeal board even if it is filed after the date of publication of this final rule. For example, a motion for stay pending an appeal on a matter that is pending before an appeal board should be decided by the appeal board even if filed after the effective date of this final rule. Under this exception the Commission expects the appeal board to continue performing its currently pending appellate functions in the Seabrook operating license proceeding.

This will conserve agency resources by assuring that an appeal board will be able to make use of its familiarity with a case to decide pending matters connected with the case. The appeal board is to decide in the first instance whether papers filed with it should be referred to the Commission under this transition plan.

The final rule being issued today amends certain of the Commission's regulations to make them consistent with this transition plan. Thus, the authorization for appeal boards to exercise the authority and perform the review functions which would otherwise be exercised and performed by the Commission in 10 CFR 2.785 and 2.1255 is revoked with respect to new appellate matters. 10 CFR 2.788 is amended to make clear that stay requests in the interim period are not to be filed with an appeal board unless closely related to a matter currently pending before the appeal board. Similarly, 10 CFR 2.1015 is amended to make clear that appeals governed by that regulation are to be filed with the Commission and not with an appeal board.

The Commission's procedure in 10 CFR 2.786 for filing a petition for review of an appeal board decision or action with the Commission remains effective for cases pending before an appeal board on the date of publication of this notice. Such a petition for review will be superfluous and will not be available to a party whose appeal is heard by the Commission under the transition plan. However, the Commission's procedure at § 2.771 for petitioning for reconsideration of a Commission decision remains effective.

Because this amendment preserves the right of parties to a merits review of initial decisions of presiding officers and relates solely to matters of agency practice, notice of proposed rulemaking and public procedures thereon are unnecessary and the amendment may be made effective upon publication without deferring effectiveness for 30 days.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0136.

Regulatory Analysis

The Commission needs a plan to achieve an efficient transition between agency appellate review by appeal boards and agency appellate review by the Commission. The transition plan put in place by this rule change will have no effect on parties other than to change the forum for appellate review of initial decisions in affected proceedings. The transition plan will, however, enable appeal boards to complete their work on existing cases without being interrupted by new appeals. By leaving all pending appellate matters for resolution by appeal boards, this transition plan also prevents any potential loss in the efforts already expended by an appeal board. Thus the cost entailed in the promulgation and application of this final rule is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this rule.

Backfit Analysis

This rule does not modify or add to systems, structures, components, or design of a production or utilization facility; the design approval or manufacturing license for a production or utilization facility; or the procedures or organization required to design, construct, or operate a production or utilization facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109 is required for this final rule.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Nuclear Regulatory Commission is adopting the following amendments to 10 CFR part 2:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239; sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section 2.785 is amended to add the following note:

§ 2.785 Functions of Atomic Safety and Licensing Appeal Board.

* * * * *

Note: Pending completion of the Commission's ongoing rulemaking proceeding for establishing procedures for direct Commission review of initial decisions, i.e., until the effective date of a final rule, the authorization of Atomic Safety and Licensing Appeal Boards to exercise the authority and perform the review functions which would otherwise be exercised and performed by the Commission is restricted as set forth in paragraphs (a) and (b) of this note, notwithstanding any provisions of this regulation to the contrary.

(a) Appeal boards are authorized to decide all appeals and other appellate and related matters (including appeals from initial decisions, interlocutory appeals and motions, certified questions, referrals and petitions for directed certification) pending before an appeal board on October 24, 1990.

(b) Appeal boards are not authorized to decide appeals and other appellate and related matters filed in the period beginning October 25, 1990, and ending on the effective date of a final rule in the rulemaking proceeding referred to above, unless a filing is closely related to a matter currently pending before an appeal board. Appeals and other appellate and related matters filed in this period will be decided by the Commission under current regulations. The appeal board should decide in the first instance whether papers filed with it should be referred to the Commission under the terms of this Note.

3. Section 2.788 is amended to add the following note:

§ 2.788 Stays of decisions of presiding officers and Atomic Safety and Licensing Appeal Boards pending review.

* * * * *

Note: Pending completion of the Commission's ongoing rulemaking proceeding establishing procedures for direct Commission review of initial decisions, requests for stays of decisions of presiding officers shall not be filed with an Atomic Safety and Licensing Appeal Board in the period beginning October 25, 1990, unless a stay request is related closely to a matter currently pending before an appeal board.

4. Section 2.1015 is amended to add the following note:

§ 2.1015 Appeals.

* * * * *

Note: Any appeal taken pursuant to the terms of this regulation after October 24, 1990, shall be filed with the Commission rather than with an Atomic Safety and Licensing Appeal Board notwithstanding any provisions of this regulation to the contrary.

5. Section 2.1255 is amended to add the following note:

§ 2.1255 Review by the Atomic Safety and Licensing Appeal Board.

* * * * *

Note: Pending completion of the Commission's ongoing rulemaking proceeding for establishing procedures for direct Commission review of initial decisions, i.e., until the effective date of a final rule, the authorization of Atomic Safety and Licensing Appeal Boards to exercise the authority and perform the review functions which would otherwise be exercised and performed by the Commission is restricted as set forth in paragraphs (a) and (b) of this note, notwithstanding any provisions of this regulation to the contrary.

(a) Appeal boards are authorized to decide all appeals and other appellate and related matters (including appeals from initial decisions, interlocutory appeals and motions, certified questions, referrals and petitions for directed certification) pending before an appeal board on October 24, 1990.

(b) Appeal boards are not authorized to decide appeals and other appellate and related matters filed in the period beginning October 25, 1990, and ending on the effective date of a final rule in the rulemaking proceeding referred to above *unless* a filing is closely related to a matter currently pending

before an appeal board. Appeals and other appellate and related matters filed in this period will be decided by the Commission under current regulations. Appeal boards should decide in the first instance whether papers filed with it should be referred to the Commission under the terms of this Note.

Dated at Rockville, Maryland, this 18th day of October 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-25115 Filed 10-23-90; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AD73

Options and Procedures for Direct Commission Review of Licensing Board Decisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to provide rules of procedure for direct Commission review of the initial decisions of presiding officers in all formal and informal adjudicatory proceedings. These regulatory changes are necessitated by the Commission's decision to abolish the Atomic Safety and Licensing Appeal Panel (ASLAP or Appeal Panel) which now provides an intermediate level of review of initial decisions of presiding officers in Commission adjudications. The Commissioners of the Nuclear Regulatory Commission will now themselves review initial decisions. The two broad alternatives for a new agency appellate review system are mandatory review, in which the Commission will review initial decisions on the merits on the appeal of a party (as appeal boards presently do) or discretionary review, in which the Commission will consider petitions for review and, in its discretion, take or reject review (as the Commission presently does with respect to appeal board decisions). The Commission seeks public comments on (1) the advantages and disadvantages of these two types of review systems, and (2) necessary or desirable procedural changes incident to either system, e.g., if a discretionary system is chosen, what should be the standard for the Commission taking discretionary review.

DATES: The comment period expires December 10, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration is given only for comments filed on or before that date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Hand deliver comments to: Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: E. Neil Jensen, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-1634.

SUPPLEMENTARY INFORMATION: Section 189a of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)) provides a right to a hearing to any person whose interest may be affected

> [i]n any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under sections 153, 157, 186c, or 188 [of the Act].

The Commission now implements this statutory requirement through a three-stage process: (1)The presiding officer (usually a licensing board or an administrative law judge) [1] issues an initial decision; (2) a party may appeal the initial decision to an appeal board constituted from the ASLAP for a review on the merits; and (3) the appeal board's decision is then subject to discretionary review by the Commission, either on its own initiative (*sua sponte*) or by petition of a party.

Since the Commission was established in 1975, the bulk of its adjudicatory functions were associated with contested nuclear power reactor construction permit and operating license proceedings. Now, after 15 years of sometimes long and complex administrative litigation, only one such proceeding remains. That proceeding, considering the Seabrook operating license, is now in the appellate stage and is likely to be completed in the next fiscal year.

When the Appeal Board was established by the Atomic Energy Commission in 1969, an intermediate level of review was thought necessary in order to focus the Commissioner's time on important policy matters rather than on routine appeals in the numerous cases then pending. When the Commission was established in 1975, the Appeal Panel was continued for the same reason. In the years since 1969 the Appeal Panel has developed a consistent, well-reasoned, and well-articulated body of case law which assured both safety and the due process rights of parties to nuclear licensing proceedings. The members of the ASLAP must be commended for their sustained, outstanding performance. However, the impending completion of the last major operating license proceeding, as well as the shift in the fundamental character of agency litigation away from licensing proceedings on power plants, present the Commission with an opportunity to restructure the NRC's appellate process and to address some of the criticisms that have been directed to the Commission's isolation from that process over the years by, for example, the Kemeny Commission and the Rogovin Special Inquiry Group. Direct Commission review of licensing board decisions will enable the Commission to increase its direct involvement in agency adjudications, provide earlier regulatory and policy guidance in litigation, and remove some of the overly-judicialized layers of formal appellate procedures that have evloved over the years. Thus the Commission is now faced with the need to devise a procedural mechanism whereby the Commission itself will provide some type of appellate review of licensing board decisions in lieu of that now provided by appeal boards. By its decision to abolish the Appeal panel, the Commission does not intend to abrogate the existing body of appeal board case law and begin writing on a clean slate. To the extend consistent with the procedural rule changes contemplated by this notice, and any other rule change that may be made in the future, existing appeal board precedent may still be cited and relied upon, and will be modified only on a case-by-case basis as issues arise, as any body of case law is modified over time.

I. Options and Procedures for Direct Commission Review of Licensing Board Decisions

In sums, there are two broad options for direct Commission review of initial decisions: discretionary review and mandatory review. Each option can be implemented with a variety of procedures. When using either option under consideration the Commission will need to examine each decision to determine if review at the Commission's own initiative (*sua sponte*) is warranted. The Commission will also be required to decide the merits of certain types of adjudicatory decisions, such as questions certified to the Commission and stay motions. The Commission is not at this time proposing any changes to its standards for interlocutory review or stay motions.

[1] For simplicity, these initial decisions will be referred to as licensing board decisions; however, all initial adjudicatory decisions are covered by this notice of proposed rulemaking.

A. Discretionary Commission Review of Licensing Board Decisions

An appellate system in which the Commission would allow only discretionary review of licensing board decisions, either upon petition of a party or *sua sponte*, is consistent with both the Atomic Energy Act and the Administrative Procedure Act. The advantage of a discretionary review system is that it would enable the Commission to focus its attention only on those cases that meet its standard for granting review.

A disadvantage to a discretionary review system is the possibility that the licensing board's decision might be appealed to a court without any petition for review having been submitted to the agency (which would alert the agency to potential problems with the decision) and in advance of the Commission deciding whether to take review to correct possible problems with the decision. This would occur if (1) the Commission permits the licensing or other action authorized by the licensing board's decision to take place at the time the decision issues [2] and (2) the court does not require the petitioner to file a discretionary petition for review with the agency before coming to court.

The Commission can prevent premature judicial review from occurring by continuing its immediate effectiveness regulation so that the more significant licensing board decisions will not become effective immediately. In addition, NRC's rules of practice could be amended to make explicit that the filing of a petition for review with the Commission is a remedy available before the decision becomes final. The Commission will thereby be creating a potential procedural remedy for a disappointed party which the party will need to exhaust before going to court.

If the Commission adopts a discretionary review system, it will need to establish standards for taking review. At the time the Atomic Safety and Licensing Board was established in 1962 to preside over contested adjudications, the Commission provided for discretionary petitions for review which were evaluated according to the following standard:

> The petition for review may be granted in the discretion of the Commission, giving due weight to the existence of a substantial question with respect to such considerations as the following:
>
> (1) A finding of a material fact is clearly erroneous;
>
> (2) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
>
> (3) A substantial and important question of law, policy or discretion has been raised;
>
> (4) The conduct of the proceeding involved a prejudicial procedural error; or
>
> (5) Any other consideration which the Commission may deem to be in the public interest.

10 CFR 2.762(d) (1962). The Commission's present regulation governing acceptance of petitions for review of appeal board decisions, 10 CFR 2.786(b)(4), is somewhat more restrictive:

> (i) A petition for review of matters of law or policy will not ordinarily be granted unless it appears the case involves an important matter that could significantly affect the environment, the public health and safety, or the common defense and security, constitutes an important antitrust question, involves an important procedural issue, or otherwise raises important questions of public policy.

This regulation further provides that a petition for review of matters of fact will not be granted absent contrary decisions by the licensing board and the appeal board. However, the Commission has retained supervisory authority to review decisions regardless whether the review standards are met. The advantage of the less restrictive standard is that it gives the Commission greater discretion to review licensing board decisions consistent with its inherent supervisory authority.

B. Mandatory Commission Review of Licensing Board Decisions

If the Commission decides to grant an appeal as-of-right to parties before the licensing board, it will be necessary to review on the merits whatever "errors of fact or law" a party may choose to appeal. *See* 10 CFR 2.762(d)(1). A possible advantage of providing a mandatory review system is that it requires a high degree of Commission involvement because all matters properly appealed would have to be decided by the Commission itself. However, in many routine cases this degree of involvement would be unnecessary. The Commission could retain its present system of allowing licensing to go forward pending a final agency decision if the immediate effectiveness criteria were met and no stay was warranted.

Proposal

The Commission proposes that a discretionary review system be adopted. It will be administratively more efficient in that Commission review would be reserved for only those cases found by the Commission to have a particular problem. Acceptable licensing board decisions would not require further merits review, thus expeditiously ending the adjudicatory proceeding. However, comments are invited on this choice.

The Commission further proposes a review standard like that which applied when the Atomic Safety and Licensing Board was established in 1962. With this revised standard, the review system the Commission has in mind will operate procedurally like the current certiorari Commission review system (10 CFR 2.786). There will be a short petition for review which will need to be filed within a fixed period (perhaps 20 days). If the petition is granted, a schedule will be set for full briefing and the sequence and length of briefs will be established. Decisions on the need for oral argument will be made on a case-by-case basis. Following briefing and any oral argument, a final merits decision will be issued. If the petition for review is denied, and there is no *sua sponte* review, the Licensing Board's decision will become final. Comments are invited on the review standard and review procedures described in this proposed approach.

To assist the Commission in performing its appellate adjudicatory functions, which primarily involves reviewing the licensing board decision and the sometimes voluminous record on which the decision is based and drafting decisions, the Commission will need to use an existing organization or establish a separate opinion writing office. While this is primarily a matter of internal Commission organization, comments are invited on the choice.

II. Transition Plan

Whatever review option is adopted, parties will need to know how cases pending while the final rule is under consideration will be handled. The Commission's transition plan for these cases is as follows.

All appeals and other appellate and related matters (including appeals from initial decisions, interlocutory appeals and motions, certified questions, referrals and petitions for directed certification) pending before an appeal board on the date of publication of this notice will be decided by the appeal board under current regulations. All appeals and other appellate and related matters filed in the period beginning one day after publication of this notice and ending on the effective date of the final rule shall be filed with the Commission, with the Commission assuming the

[2] Under agency practice, finality and effectiveness are not the same; certain licensing board decisions (those comprised within NRC's immediate effectiveness rule (10 CFR 2.764)), can be effective, so the license may be issued, even though the decision is still under Commission review and is therefore not final.

decision role that would otherwise have been performed by the appeal board. However, if a filing is related closely to a matter to be decided by an appeal board, it should be decided by the appeal board even if it is filed after the date of publication of this notice. For example, a motion for stay pending an appeal before the appeal board should be decided by the appeal board even if filed after the date of publication. The appeal board should decide in the first instance whether papers filed with it should be referred to the Commission under this transition plan. The Secretary may refer papers improperly filed with the Commission to an appeal board.

The NRC is publishing in this issue of the **Federal Register**, in a companion document, a final rule amending certain of its regulations to make them consistent with the transition plan described above.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Review

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

Regulatory Analysis

Section 189a(1) of the Atomic Energy Act (42 U.S.C. 2239) affords any person whose interest may be affected a right to a hearing

> [i]n any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under sections 153, 157, 186c, or 188. . . .

The Commission's procedural rules now provide an intermediate layer of administrative appellate review of initial decisions of presiding officers by appeal boards constituted from the ASLAP. However, the Commission has recently determined to abolish the ASLAP. In its place, the Commission intends to establish a mechanism for direct review of decisions of presiding officers by the Commission. The two broad alternative mechanisms being considered by the Commission are a mandatory system of agency appellate review and a discretionary system of agency appellate review. The cost of whatever mechanism is eventually adopted is not expected to be significantly more, in terms of the time and resources needed by the Commission and parties to achieve administrative appellate review of initial decisions, than the present system of appellate review by appeal boards. If a discretionary system is ultimately adopted, the cost for the parties as well as for the Commission in the time and resources needed for appellate review of initial decisions is likely to be less. It is thus apparent that the cost entailed in the promulgation and application of this proposed rule is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

The proposed rule will not have a significant economic impact upon a substantial number of small entities. Many applicants, licensees and intervenors fall within the definition of small businesses found in section 34 of the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121, or the NRC's size standards published December 9, 1985 (50 FR 50241). If a discretionary review system is adopted, the procedural requirements on licensees or intervenors may be reduced because they will not need to fully brief errors of fact or law that they may perceive in a presiding officer's decision prior to seeking judicial review unless the Commission first determines to take review of the decision. Licensees and intervenors will, however, need to file petitions for discretionary review with the Commission if they perceive errors in the presiding officer's decision and intend to seek judicial review. If a mandatory review system is adopted, the burden on licensees and intervenors will be substantially the same as it is at present. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

This proposed rule does not modify or add to systems, structures, components, or design of a production or utilization facility; the design approval or manufacturing license for a production or utilization facility; or the procedures or organization required to design, construct, or operate a production or utilization facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Nuclear Regulatory Commission is proposing to adopt amendments to 10 CFR part 2. After consideration of public comments, a final rule and notice of final rulemaking will be prepared and published.

Dated at Rockville, Maryland, this 18th day of October 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-25116 Filed 10-23-90; 8:45 am]

BILLING CODE 7590-01-M

federal register

Wednesday
October 24, 1990

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 27 and 52
Federal Acquisition Regulation (FAR); Rights in Technical Data; Advanced Notice of Proposed Rulemaking

DEPARTMENT OF DEFFNSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 27 and 52

Federal Acquisition Regulation (FAR); Rights in Technical Data

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Spac.. dministration (NASA).

ACTION: Advanced notice of proposed rule making; change in meeting location.

SUMMARY: The Department of Defense, General Services Administration and the National Aeronautics and Space Administration published an advanced notice of proposed rulemaking on Rights in Technical Data on October 15, 1990, (55 FR 41788). The original public hearing location for all public hearings was to be at the U.S. Chamber of Commerce. This document changes the public hearing location and time for the first public hearing, October 26, 1990.

DATES: The public hearing on October 26, 1990, will be held from 10:00 am to 5:30 pm local time.

ADDRESSES: The public hearing on October 26, 1990, will be held in Room 1E245, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Note: Participants should plan to arrive early to allow time for building security.

FOR FURTHER INFORMATION CONTACT: Linda W. Neilson, telephone (703) 697-7266.

(40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c)).

Nancy L. Ladd,

Colonel (sel), USAF, Director, Defense Acquisition Regulatory System.

[FR Doc. 90-25366 Filed 10-23-90; 11:03 am]

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Vol. 55, No. 206

Wednesday, October 24, 1990

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 4758/Pub. L. 101-438

Rio Grande American Canal Extension Act of 1990. (Oct. 18, 1990; 104 Stat. 1001; 3 pages) Price: $1.00

H.J. Res. 602/Pub. L. 101-439

Designating October 1990 as "National Domestic Violence Awareness Month". (Oct. 18, 1990; 104 Stat. 1004; 2 pages) Price: $1.00

S. 247/Pub. L. 101-440

State Energy Efficiency Programs Improvement Act of 1990. (Oct. 18, 1990; 104 Stat. 1006; 11 pages) Price: $1.00

S. 830/Pub. L. 101-441

To amend Public Law 99-647, establishing the Blackstone

River Valley National Heritage Corridor 1 Commission, to authorize the Commission to take immediate action in furtherance of its purposes and to increase the authorization of appropriations for the Commission. (Oct. 18, 1990; 104 Stat. 1017; 2 pages) Price: $1.00

S. 2437/Pub. L. 101-442

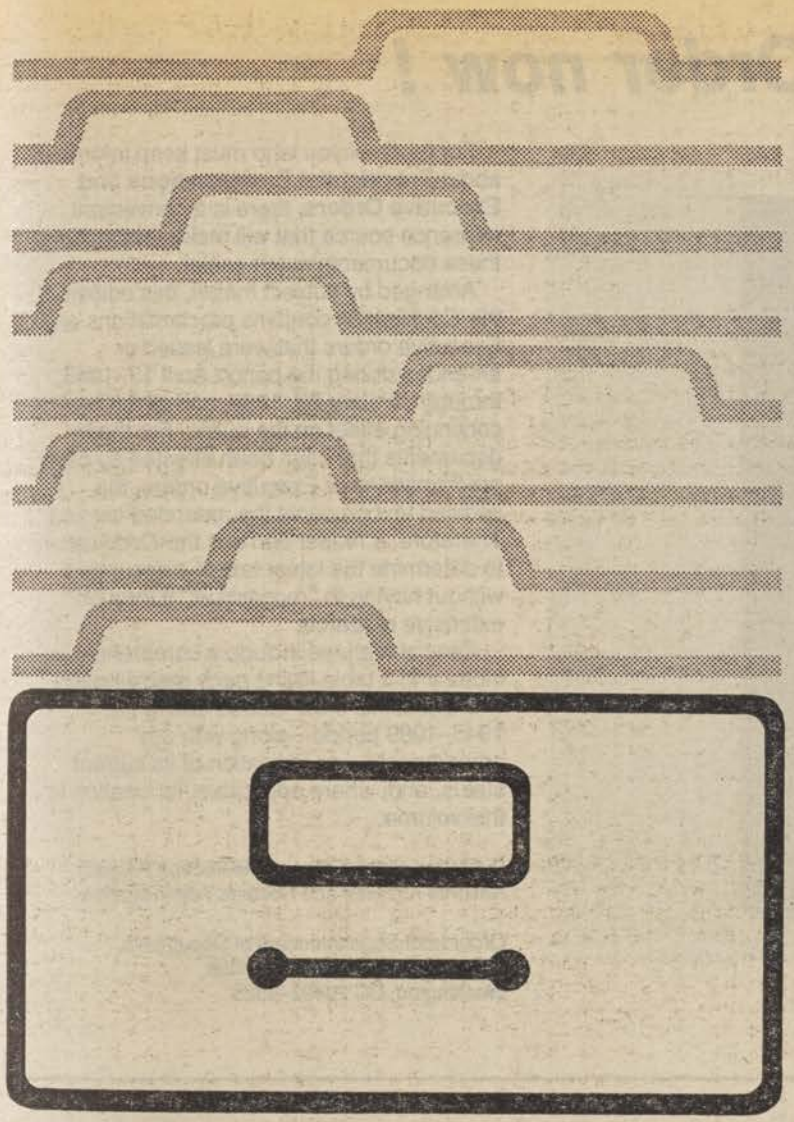
To authorize the acquisition of certain lands in the States of Louisiana and Mississippi for inclusion in the Vicksburg National Military Park, to improve the management of certain public lands in the State of Minnesota, and for other purposes. (Oct. 18, 1990; 104 Stat. 1019; 9 pages) Price: $1.00

H.R. 3468/Pub. L. 101-443

Connecticut Coastal Protection Act of 1990. (Oct. 19, 1990; 104 Stat. 1028; 2 pages) Price: $1.00

H.J. Res. 677/Pub. L. 101-444

Making further continuing appropriations for the fiscal year 1991, and for other purposes. (Oct. 19, 1990; 104 Stat. 1030; 4 pages) Price: $1.00



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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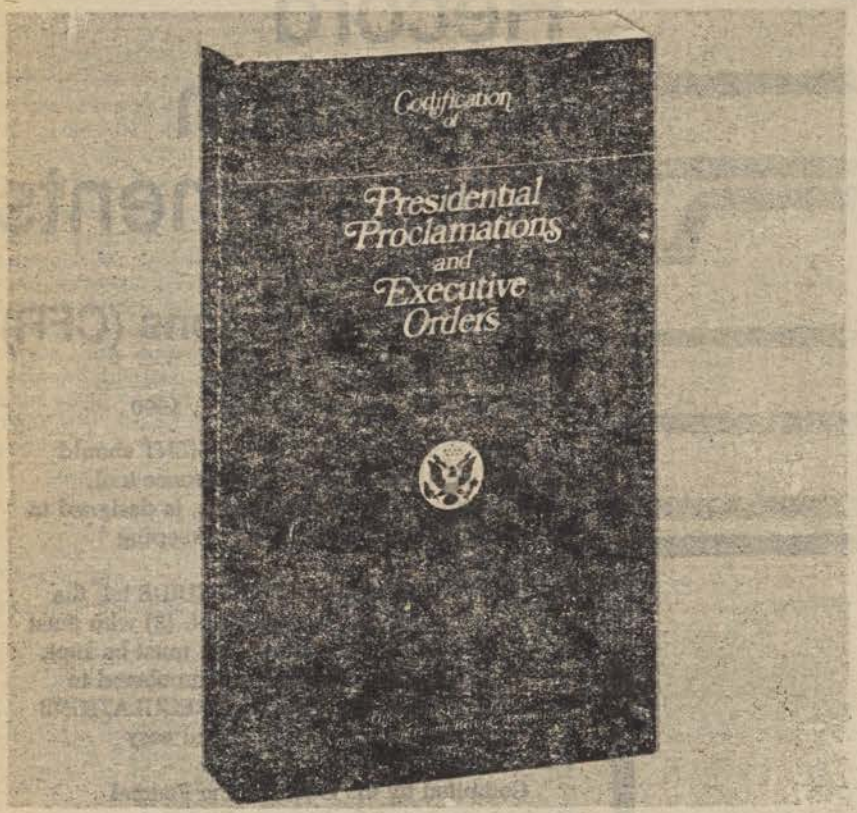

For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

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